DOCUMENT RESUME

ED 101 360 CS 201 814

TITLE	Press Censorship Newsletter No. VI.
INSTITUTION	Reporters Committee for Freedom of the Press, Washington, D.C. Legal Defense and Research Fund.
PUB DATE	Jan 75
NOTE	81p.
AVAILABLE FROM	The Press Censorship Newsletter, Reporters Committee for Freedom of the Press, Legal Defense & Research Fund, Room 1310, 1970 Pennsylvania Ave. N.W., Washington, D.C. 20036 (Single copies free)
EDRS PRICE	MF-$0.76 HC-$4.43 PLUS POSTAGE
DESCRIPTORS	Broadcast Industry; *Censorship; Civil Liberties; Confidentiality; *Court Litigation; *Freedom of Speech; Information Sources; Journalism; *Legal Problems; *Mass Media; Newspapers; Student Publications

ABSTRACT

A compendium of legal actions affecting the First Amendment and freedom of information interests of all the media on the federal, state, and local levels, this newsletter contains 316 indexed summaries of "Media Law Reports." The abstracts are arranged in 10 categories: prior restraints on publication and distribution, freedom of information, confidentiality of news sources, fair trial-free press/access to the courts, privacy and libel, right of reply/access to the media, the broadcast media, labor, high school and college press, and miscellaneous developments. (TO)

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DECEMBER – JANUARY

PRESS CENSORSHIP NEWSLETTER No. VI.

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77 pages: 316 indexed summaries of
Media Law Reports

Compiled and distributed as a public service by

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
LEGAL DEFENSE AND RESEARCH FUND
WASHINGTON, D.C.

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THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS. . . IS

The only legal research and defense fund organization in the nation exclusively devoted to protecting the First Amendment and freedom of information interests of the working press of all media.

* * * * * * * * * * * * * * * * *

The organizational premise of the Committee is that the Constitutional interests of working news reporters, news editors and photographers may be different from the legal interests of other institutional organizations involved in freedom of speech and press problems.

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Steering Committee members perform on a volunteer basis. Generally, legal representation is performed on a pro-bono publico basis by law firms. The Committee provides *funding*, *legal advice*, *representation*, and *research* services on both litigative long-term and emergency short-term bases to individual reporters and to the working press as a class. No donations are asked from individual reporters who benefit specifically from the Committee activities. The Committee is mainly funded by grants from major media organizations.

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The Committee welcomes complaints about serious infringements on the legal rights of the working press, and welcomes inquiries about its activities: Write c/o Room 1310, 1750 Pennsylvania Avenue, N.W., Washington, D.C., 20006; Telephone Jack Landau at 202/298-7460.

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NOTE: The Reporters Committee has available *court opinions*, *briefs*, and *case citations*, pending *bills*, legislative *analyses*, *clips* or other background information for most items reported in this *Newsletter*.

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Editors: Ruth MacNaughton, John Fox, Fielding McGehee, Ronald Schechter.

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FYI—MEDIA ALERT

Enclosed please find the **December - January** edition of the *Press Censorship Newsletter*, a compendium of legal actions affecting the First Amendment and freedom of information interests of all the media on the federal, state and local level.

We particularly **call to your attention** the following developments and trends:

•The provisions of the amendments to the Freedom of Information Act which should discourage the **delay and red-tape** encountered by the media in using the Act as passed in 1966. (p. 15)

*The Omnibus Privacy-Secrecy Bills now pending in both the House and the Senate which would seal **all "personal" records** of persons who have government contracts or who are otherwise grantees of government funds. (p. 51)

•The increasing momentum under the guise of privacy to **seal public record arrest and conviction files** on the federal, state and local levels. (p. 52)

*The evidence alleging that the Department of Justice **is not following its own guidelines** in issuing subpoenas to news reporters seeking confidential information. (p. 39)

•The use by California police four times this year of **no-notice search warrants** to search media offices, rifle files and remove news information as a method **to avoid the California shield laws** which prohibits forced disclosure of confidential news sources. (p. 30)

*The **continued use of broad-gag orders** by courts barring news media access to public court records and proceedings and even barring editorial comment on cases, with two gag order test cases now pending at the Supreme Court. (p. 5)

•The continuing effort to impose **both criminal penalties and prior restraint publication orders** against any media organization which obtains any **"national security"** information without the government having to show that the information would pose a danger to the nation's security.(p. 17)

*Two pending Supreme Court cases on the question of whether private individuals involved in "public events" **can sue the media** for alleged invasions of their privacy. (pp. 53-54)

•The use of state criminal justice system employees to attempt **to intimidate the media** for critical investigative reporting (i.e. the **indictment** of two Indiana reporters, the **arrest** of a Kentucky policemen charged with burning down the Whitesburg, Ky. *Mountain Eagle* newspaper, the **arrest** of two Louisville, Ky. reporters, and the denial of **police passes** to established black and underground newspapers). (pp. 27-28)

*The new federal rules of evidence which, if the Senate version is accepted, would bar the media **from pleading state shield laws** before federal grand juries and before libel case juries seeking confidential information. (p. 35)

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In October, 1973, Susan Stranahan of *The Philadelphia Inquirer* reported that a defendant in a perjury trial was also under indictment for conspiracy to murder a government informer. U.S. District Court Judge J. William Ditter later issued an oral order directing all reporters not to mention the other indictment. Violation of the order would subject the Philadelphia media and their reporters to contempt charges, the judge said.

Judge Ditter subsequently issued a written order. The *Inquirer* challenged the order and the U.S. Court of Appeals temporarily stayed it pending resolution of the appeal.

The newspaper argued that the silence order violated the First Amendment freedom of the press guarantee in that it constituted a prior restraint on publication. It also maintained that the district court's initial order was entered without proper procedural safeguards of notice and a hearing.

On Aug. 8, the U.S. Court of Appeals for the Third Circuit used its supervisory powers over the lower federal courts to void the district court's order. The court said the order was procedurally deficient because it was not in writing, was without notice to the press and did not afford the press an opportunity to be heard.

This marked the first time that a federal appellate court has overturned a gag order directed against the press by recognizing the press' right to be notified and consulted in advance about orders limiting their rights to report on public record trials.

The majority opinion said "the district court should have vacated the oral order, held a prompt hearing after notice to the involved members of the press and the parties, and, if a silence order was deemed to be justified, reduced such order to writing with specific terms and reasons and had it entered on the district court docket."

These procedural requirements, the court noted, are "particularly necessary" in cases where the order affects the press' First Amendment rights.

A concurring opinion signed by three of the circuit judges would have gone further and voided the order for lack of constitutional procedural due process of law under the 14th amendment. The concurring opinion said that procedural safeguards put into effect before publication was restrained would "increase the liklihood that decisions affecting First Amendment rights will not unconstitutionally impair the exercise of those rights."

"Different circumstances may well call for different procedures, but any procedure must be directed to the end of achieving a thorough and well-reasoned decision properly deferential to First Amendment interests."

In November, Judge Ditter appealed the decision to the U.S. Supreme Court. Briefs have also been filed by the *American Newspaper Publishers Association* and *The Reporters Committee*.

2. SUPREME COURT ASKED TO HEAR TIMES-PICAYUNE GAG ORDER CASE

A New Orleans judge ordered the press in June not to publish any editorials, investigative stories or open court testimony relating to a pre-trial hearing in a controversial criminal case (see *PCN V*, p. 17). The *Times Picayune* appealed to the Lousiana Supreme Court challenging the order as unconstitutional prior restraint of the press. In a 4-3 decision, the Lousiana Court refused to void the order.

The *Times Picayune* then appealed to U.S. Supreme Court Justice Lewis Powell for a temporary stay of the order. Powell granted the stay in July 24 insofar as it applied any direct prior restraints against the press, pending a full hearing of the case.

Subsequently, the *Times Picayune* filed an appeal for Supreme Court review. The Court has not yet said whether it will hear the case.

Briefs supporting the *Times Picayune* position have also been filed by the *American Newspaper Publishers Association* and *The Reporters Committee*. In its brief, *The Reporters Committee* argues that gag orders restricting the media from reporting public record court proceedings are void and may be violated by the media without concern about the imposition of sanctions. In addition, the *Committee* argues that gag orders issued in public court proceedings without notice to the news media affected by the order and without any opportunity to be heard during the formulation of the order violate the constitutional concept of due process of law and are therefore procedurally invalid. (See the story directly preceeding this one for a fuller explanation of the Due Process Proposal).

3. IDAHO JUDGE BARS NEWSPAPER FROM PUBLISHING ITS OWN DEPOSITIONS IN LIBEL ACTION

Ken Matthews, a reporter for the *Idaho Statesman*, did a series of investigative stories on the Idaho Endowment Fund Investment Board (see related story, this *PCN*, p.), a state agency which manages the investment of state funds. One story charged that a member of the board, a Biose stockbroker, was guily of a conflict of interest because his brokerage firm handled a large amount of state investment funds.

The stockbroker sued the *Statesman* for libel. At a pre-trial deposition session attended by Matthews, the stockbroker and their attorneys, the stockbroker objected to Matthews' attempts to record the session. He

then sought a court order barring all news reporting of the deposition.

A state judge subsequently issued an order restraining the *Statesman* "from making any comment" about what the stockbroker said at the deposition. The judge said that freedom of the press was "irrelevant" and that his responsibility was to protect the plaintiff from harassment.

The *Statesman* is planning to appeal the ruling.

4. OHIO REPORTERS HELD IN CONTEMPT FOR PUBLISHING NAME OF COURT WITNESS

In late June, a kidnapping trial began in the Court of Common Pleas in Fayette County, Ohio.

On June 25, Judge Evelyn Coffman orally ordered reporter Ed Summers of the *Washington Court House* (Ohio) *Record-Herald* not to publish the identity of a missing material witness who had been named in open court. Summers ignored the order, and the witness' name was published in the June 25 edition of the *Record-Herald*.

The following day, Coffman, citing the Summers article, declared a mistrial in the kidnapping case.

On July 16, the judge found Summers in contempt of court for violating the June 25 order. The judge stated that Summers' action "was calculated to and did impede the administration of justice." The judge also issued a gag order prohibiting law enforcement officials from making extra-judicial statements about any matters that might ultimately reach the court.

On August 30, a hearing on the contempt charge was held before Judge J. Donald Ratcliff of Ross County Court of Common Pleas. The court found Summers not guilty of contempt, holding that "a judge has no right to gag the press for (sic) reporting actions which occur within the courtroom." The order relating to the law enforcement officials was not challenged.

5. CALIFORNIA NEWSPAPERS AGREE TO SECRET WITNESSES IN CRIMINAL TRIAL

In October, during jury selection in the California trial of two convicts accused of killing a prison guard, the prosecutor requested members of the press not to print the names of the prosecution's inmate witnesses. The prosecutor said the witnesses' lives would be in danger if their names appeared in print.

The reporters refused to agree to the request, contending that anything revealed in open court should be subject to publication. Reporters also asked the prosecutor to give them advance notice of any motion for a gag order so that the press could obtain legal representation before the order was instituted.

Several hours later, in response to a prosecution motion and with no notice to the press, San Joaquin Superior Court Judge William H. Woodward issued an order barring several local newspapers— the *Stockton Record*, *Lodi News Sentinel*, *Tracy Press*, *Manteca Bulletin*, *Ripon Record* and *Escalon Times*—from publishing the names of prosecution inmate witnesses. The next day, the judge extended the order to include the *San Francisco Chronicle*, *Sacramento Bee* and *Sacramento Union*. The broadcast media and wire services were not affected by the order.

Four days later, on October 16, as attorneys for the *Stockton Record* and the McClatchy Newspapers (publishers of the *Sacramento Bee*) were preparing to challenge the order in an appellate court as a direct prior restraint on the press, Judge Woodward conferred with the attorneys and *Stockton Record* publisher Robert P. Uecker and issued a compromise order. The new order, accepted by the press, said that inmate witnesses would be sworn in chambers and would be identified in open court by aliases only.

NOTE: A similar order by a San Bernardino, California, trial judge barring publication of the names of inmate witnesses was voided by a state appeals court in 1973 (see *PCN I*, p. 6).

SUPREME COURT TO DECIDE CONVICTION FOR ABORTION AD

Awaiting Supreme Court decision after oral agruments this fall is *Bigelow v. Virginia*, a case involving the scope of First Amendment protection to which newspaper advertisements are entitled. Jeffrey C. Bigelow, editor of the Charlottesville *Virginia Weekly*, is appealing a conviction and $500 fine for publishing an advertisement for an abortion referral service in violation of a state law which makes it a misdemeanor to advertise "or in any other manner encourage or prompt the procuring of an abortion."

Bigelow is arguing that the statute should be declared unconstitutional because abortion is a constitutionally protected operation and therefore an abortion ad is fully protected by the First Amendment. The Virginia Supreme Court, however, has twice upheld Bigelow's conviction, on the ground that government regulation of commercial advertising in the medical-health field is permissible under the First Amendment, regardless of the legality of the operation (see *PCN IV*, p. 47 and *PCN V*, p. 23).

7. COURT LIFTS BAN ON SOUTH AFRICA JOB ADS IN N.Y. TIMES BUT SAYS ADS NOT PROTECTED BY FIRST AMENDMENT

In October 1972, a complaint was filed with the New York City Commission on Human Rights charging that *The New York Times* had violated a city statute by publishing advertisements for employment in South Africa.

The complaint alleged the *Times* was liable as an "aider and abettor" of employers who violated a law

prohibiting job advertisements which express "directly or indirectly" limitations as to race.

After a hearing, the Commission issued an opinion and an injunction on July 19, 1974 prohibiting the *Times* from printing any further ads recruiting employees for jobs in South Africa.

The Commission declared that the ads "expressed discrimination" by mentioning South Africa as the location of the jobs, although the ads made no reference to race. The Commission found in effect that the words "South Africa" had become code words for racial discrimination, because of that country's well-known white supremacy policies.

The *Times* appealed to the New York State Supreme Court, arguing the Commission's decision violated the First Amendment because it instituted government burden on the press, because ads for foreign employment control over what can be published.

The *Times* further claimed that if left standing, the Commission's decision would impose an unconstitutional burden on the press, because ads for foreign employment could not safely be printed without an investigation of the employment practices of the country involved.

On October 30, the court reversed the Commission's decision and lifted the injunction against the *Times*.

The court rejected the findings that the South Africa job ads were code words for discrimination and held that the Commission's action was in excess of its powers, which did not include oversight over foreign employment practices.

But the court rejected the *Times*' First Amendment arguments. Relying on the *Pittsburgh Press* sex-designated want ads (see *PCN II*, p. 21), the court found the ads fell within the area of commercial advertising and hence were unprotected by the First Amendment.

8. **WSB-TV ATLANTA: CRIME VICTIM-GAG** (See this *PCN*, p. 53)

PRIOR RESTRAINT AGAINST MARCHETTI BOOK CONTINUES SIX MONTHS

In April, U.S. District Court Judge Albert Bryan rejected in large part an effort by the government to censor portions of the controversial book on the CIA by authors Victor Marchetti and John Marks. He rejected all but 26 of the 168 deletions in the book sought by the government, but stayed that order pending appeal. (See *PCN IV*, p. 43 and *PCN V*, p. 20).

The result of that stay has been a prior restraint now continuing into its sixth month. The book—*The CIA: The Cult of Intelligence*—is now in its third edition with 168 blank spaces in place of the 168 deletions under litigation.

The Fourth Circuit Court of Appeals had agreed to decide the appeal in the case on an expedited basis. Although the appeals court heard oral arguments June 5, it has yet to hand down its decision.

291 DAY INJUNCTION VS ABC NEWS ENDS IN SETTLEMENT; ABC ABANDONS APPEAL 10.

In November 1973, a manufacturer of plastic baby cribs objected to a statement of an *ABC-TV* documentary on fire hazards entitled "ABC News Close Up—On Fire!" The company claimed the film segment, which showed one of its baby cribs being burned, was libelous and misleading because it condensed a 10-minute test into 40 seconds. The crib manufacturer obtained a trade libel injunction against the segment in an Indiana state court.

Complying with the injunction, *ABC* telecast the documentary on November 26, 1973 with the 40-second crib burning segment deleted. In its place ran a message that an omitted segment was then in litigation.

Apparently the first prior restraint against network news, the injunction was one of the longest prior restraints of any kind. It lasted 291 days.

Restraint Lifted

On June 14, 1974, an Indiana appeals court overturned the injunction as unconstitutional prior restraint. It rejected the crib manufacturer's argument that the regulated media are entitled to less First Amendment protection than other media and held that "subject to specified controls the basic concept of freedom of speech and freedom of press apply nonetheless to the broadcasting industry" (see *PCN IV*, p. 5 and *PCN V*, p. 20).

The crib manufacturer appealed to the State Supreme Court, with the result that the order overturning the injunction was stayed, and the prior restraint remained in effect.

Finally, on September 13, 1974, the injunction was lifted after 291 days. On that date the appeal was dismissed by consent of both parties. That evening's news carried the burning crib scene, updated to a 2-minute sequence that showed the burning of the plastic crib, followed by an attempt to burn a wooden crib.

NON-COMMISSIONED OFFICERS SEEK INJUNCTION AGAINST ARMY TIMES IN LIBEL SUIT 11.

In July and August, the *Army Times* newspaper, distributed to members of the armed services, ran a series of three articles in its bi-monthly "Family" magazine section discussing the insurance program run by the Non Commissioned Officers Association (NCOA).

In August, the NCOA filed a $10 million libel suit in federal court in Texas alleging that the articles were

"false, misleading and defamatory" in that they suggested "that NCOA is nothing more than a device to bilk noncommissioned officers out of their earnings by selling them high-cost life insurance."

In addition, the NCOA sought a permanent injunction against the *Army Times* prohibiting it from "publishing or representing false, misleading and defamatory material" about the NCOA or its activities.

No trial date has been set.

12. **US COURT WON'T BAN CONSUMER AD INFORMATION**

In June, the Denver Advertising Review Board, composed of local businessmen, convened an informal adversary proceeding to judge the fairness of an advertisement of Pat Walker's Ladies Slenderizing Salon following a complaint filed by the local Better Business Bureau.

Board decisions regarding advertisers who fail to conform to the Board's findings within 10 days are distributed to the news media and to interested government agencies as an incentive to compliance.

Walker's boycotted the hearing on the grounds that the Review Board lacked jurisdiction, acted in restraint of trade and the hearing method used lacked procedural due process of law.

After receiving notice of the Board's ruling against it, Walker's filed suit in federal court seeking a preliminary injunction to stop the distribution of a Review Board press release about the Walker's advertisement to members of the news media and the public.

In July, the court denied the injunction due to technical defect and because it was an unconstitutional prior restraint of the press.

13. **WASHINGTON POST CRIME VICTIM SUIT**
(See this *PCN*, p. 53)

14. **SEC MOVING TOWARDS REGULATION OF FINANCIAL NEWS REPORTING & CONTENT IN TWO UNPRECEDENTED CASES**

NOTE: Two recent cases raise the possibility that the entire area of financial reporting may be increasingly subject to prior restraints on content.

Under the two federal securities acts, companies, corporate officers, dealers and brokers are subject to numerous disclosure rules requiring them to convey "full and fair" information to the investing public. Until recently, there were few cases where these disclosure rules had any direct impact on the press.

Now, however, there are indications that the Securities and Exchange Commission is moving toward requiring financial reporters to disclose their stockholdings as a condition for reporting certain types of financial news.

The two cases discussed below are both unprecedented.

One is the first civil fraud case filed by the SEC against a financial writer. The other is the first criminal prosecution of a financial writer under a little-used provision of the Securities Act of 1933.

The disclosure problem was a major issue in both cases.

Because of the potential securities law problems, many newspapers have fixed policies forbidding reporters to trade in the stock of companies they write about.

The only other known recent case of an SEC action against the news media involved *The Wall Street Transcript*, a weekly financial report consisting mainly of reprints of investment letters but containing some independent editorial content (see *PCN II*, p. 21).

In that case, the SEC claimed that the *Transcript* had violated the Investment Adviser's Act of 1940 by failing to register under the Act as an investment adviser. It claimed the *Transcript* was not a "bona fide newspaper" excluded under the Act. A district court dismissed the SEC complaint, but in 1970 the U.S. Court of Appeals upheld the SEC's right to investigate the press under the 1940 Act. The Supreme Court let the appeals court decision stand.

15. **SEC FORCES CALIF. FINANCIAL WRITER TO CENSOR ANY STORY INVOLVING A STOCK HE OWNS**

In July 1972, the Securities and Exchange Commission filed suit against Alex N. Campbell, columnist and former financial editor of the Los Angeles *Herald-Examiner*, charging him with fraudulently profiting from sales of stock purchased shortly before they became subjects of his column.

Also charged in the SEC civil lawsuit was Campbell's son, Alex N. Cambpell Jr., a former stockbroker who is presently editor and publisher of the *Western Financial Journal*, a monthly publication based in Los Angeles.

It was the first civil fraud action ever brought by the SEC against a financial writer.

The Campbells were charged under section 10(b) of the Securities and Exchange Act of 1934, which requires disclosure of all material facts in market information about a security.

The SEC alleged the Campbells "secretly and repeatedly made profits for themselves while defrauding other investors" by purchasing companies' stock, publishing articles about the companies and then quickly selling to take advantage of short-term price rises occurring after the articles appeared. The SEC alleged the Campbells did this more than 100 times over a five-year period.

The Commission sought a permanent injunction against the alleged violations and disgorgement of the alleged profits obtained.

Charges Denied

The Campbells denied the stock manipulation charges and contended that the articles in question had no effect on the prices of the stocks written about.

They also argued that an injunction would constitute a prior restraint abridging their First Amendment rights.

In response to the SEC's charge that the financial writers should have disclosed their position in any stock written about, the Campbells argued that such a disclosure would only have increased the likelihood that the price rises alleged by the SEC would ultimately have occurred.

In October, the case was settled by a consent decree one day before the Campbells were scheduled to go on trial in Los Angeles.

Without admitting or denying the charges against them, the Campbells agreed to the terms of a permanent injunction prohibiting them from trading in any security which they have reason to believe may be the subject of any publication, and directing them to disclose in any article they write any stock ownership in any company written about. They also agreed to pay $5,000 into a federal court. The SEC originally had sought $25,000.

The Campbells later denied violating any law and stated they agreed to the consent order to avoid further heavy legal expenses.

16. **N.Y. FINANCIAL WRITER INDICTED FOR NOT DISCLOSING PAYMENT BY FIRM HE WROTE ABOUT; "ANTI-TOUTING" LAW USED**

The September 29, 1972 issue of *Value Line Selection & Opinion*, a weekly investment publication, contained an article by William Eric Aiken strongly recommending the purchase of Power Conversion, an over-the-counter stock. Aiken, who was then editor of *Value Line*, wrote that the "heady multiple" being placed upon the stock appeared in line with the company's performance and prospects, and he described the stock as a "rewarding commitment" for venturesome investors.

On October 24, 1974, a federal grand jury indicted Aiken for failing to disclose in the 1972 article or elsewhere that he received a $15,000 payment from two dealers in the stock to write the article. The indictment was based upon the so-called "anti-touting" provision of the Federal Securities Act of 1933, which prohibits anyone from publishing an article about a security which he has been paid to write by an issuer, underwriter or dealer, without disclosing the payment and its amount.

Aiken's indictment is believed to represent the first prosecution of a financial writer under the provision.

Two dealers indicted together with Aiken were charged under the securities act with giving him the authorized payment.

All three men were also charged with mail fraud. Each faces a maximum penalty of five years in jail and a $1,000 fine on each of six counts of mail fraud, and five years in jail and a $5,000 fine on each of six counts of securities law violation.

DISTRIBUTION

17. **LONG BEACH NUDE NEWSRACK ENJOINED**

California Superior Court Judge Roy J. Brown granted a preliminary injunction July 19 preventing enforcement of a Long Beach municipal ordinance banning sidewalk newsracks displaying pictures of nude bodies. The injunction was issued in response to a taxpayers suit filed by Bernice L. Hogan who claimed city funds were being wasted to enforce an ordinance she said violated freedom of the press. (For other newsrack suits, see *PCN V*, pp. 28-30).

18. **FEDERAL COURT VOIDS PENN. NEWSRACK BAN**

In March 1971, the Swarthmore, Pennsylvania City Council passed an ordinance forbidding obstructions along streets and sidewalks to allow less congested passage in the city.

Swarthmore city officials notified the *Philadelphia Inquirer* in April, 1974, that two of their newsracks were in violation of the ordinance, and removed them. The paper filed suit in federal court.

The court entered a temporary restraining order barring enforcement of the ordinance pending a full hearing. The action marked the second time a federal court had considered the question of the constitutionality of city ordinances regulating the use and placement of newsracks along public streets (see *PCN V* pp.28-30).

A federal District Court Judge permanently struck down the ordinance August 8 as it applied to newsracks on First Amendment grounds. The court said that newsrack sales along public streets were a "constitutionally protected means of distribution." The court also noted the public's right of access "that is free as possible" to the means of distribution.

The court's opinion, however, left open the possibility of "reasonable regulation" of newsracks relating to:

- the size and location of news stands;
- aesthetic considerations and the appearance of newsracks;
- advertising to appear on the stands themselves.

Prior Restraints/Judicial

19. **FED. CT. CITES STUDENT PRESS CASES IN ALLOWING INMATE NEWSPAPER**

Authorities at the Vermont State Prison halted distribution of the January 1973 issue of a monthly newspaper published by inmates. The prisoners sued in federal court under the civil rights laws, seeking an injunction prohibiting interference with their publication.

In October 1974, the court ruled in the inmates' favor. The court found close analogies in the issues raised in cases concerning high school and college newspapers and then cited those cases in support of its holding that prison officials could not censor the content of the prison newspaper unless that newspaper threatened prison security, prison order or prison rehabilitation.

20. **GOVERNMENT'S EMERGENCY POWERS TO SEIZE FOREIGN NEWSPAPERS BEFORE SUPREME COURT**

In July 1969, Washington, D.C., resident Susanne Orin returned to the U.S. from a brief visit to Canada, crossing the border at Niagara Falls. Federal customs agents there searched her luggage and confiscated three paperback books published and printed in North Vietnam.

The three publications, *The Vietnamese Problem, North Vietnamese Medicine Facing the Trial of War* and *Literature and Liberation in South Vietnam*, were burned the same day by the agents, despite Orrin's insistence that they be returned to her and her refusal to sign a waiver form abandoning them. There was no hearing prior to the seizure or destruction.

Customs agents justified their actions citing violations of the Trading with the Enemy Act. The act prohibits unlicensed business transactions between Americans and North Vietnamese to cut off any economic benefit flowing from the U.S. to North Vietnam through the purchase of goods.

The Act is one of several hundred statutes giving the President broad economic and social control during periods of "National Emergency." The bill dates back to World War I and was reactivated in 1933 under President Roosevelt. Since then, the existence of a continuous national emergency has been ordered by Presidents Truman, Eisenhower, Kennedy, Johnson and Nixon.

Under the Act, certain materials may be licensed for purchase from North Vietnam, a process which takes about two months. In addition, gifts are exempted from coverage under the Act although the burden is on the gift recipient to prove the gift.

Orrin filed suit in federal court challenging the seizure and censorship of the books as an unconstitutional prior restraint of the press in derogation of the First Amendment.

On April 27, 1972, U.S. District of Columbia District Court Judge Barrington D. Parker upheld the government's seizure. The court said it was "sufficiently satisfied that regulation of the non-speech element is being effected in a narrow fashion so as to minimize any possible incidental limitation upon Plaintiff's First Amendments rights."

Orrin appealed to the District of Columia Court of Appeals which also upheld the seizure in June 1974.

The case is currently pending appeal to the U.S. Supreme Court.

SEARCH WARRANTS SEIZURES OF NEWS

PRIOR RESTRAINTS BY SEARCH WARRANT 21.
SEIZURES OF NEWS MEDIA FILES AND 22.
DOCUMENTS: STATION KPFK-FM, THE L.A. 23.
STAR, STATION KPOO-FM, THE BERKELEY 24.
BARB & THE SOONER STATE NEWS AGENCY 25.
(See this *PCN*, p. 30)

Legislative

NEWSPAPER BARS LOTTERY ADS 26.

A federal anti-lottery statute, 18 U.S.C. 1302, which was passed in the late 1800's, forbids the use of the mails to further a lottery.

Because of this statute, the *Bangor* (Maine) *Daily News* has suspended publication of advertisements for the Maine State Lottery. About a quarter of the *News* circulation is sent through the mail, and the newspaper does not have the facilities to print two different edtitions. Newspapers in the 13 states that presently have lotteries face similar problems.

On September 6, Attorney General William Saxbe warned the states that their lotteries may be violating federal law, including various postal regulations. The states claim that the federal lottery laws apply only to private lotteries and not to lotteries run by state governments.

There are presently four bills pending in the Senate which would exempt state lotteries from the federal anti-lottery laws. One such bill, S. 1186, was introduced by Sen. Richard Schweiker (R-Pa.). It has been before the Senate Judiciary Committee since March 1973. All four bills would permit the use of the mails to advertise and report the results of lottery drawings.

This controversy arose soon after the U.S. Supreme Court agreed to review a 1971 Federal Communications Commission ruling which held that radio and television stations cannot broadcast winning lottery numbers on

the day they're drawn and any advertisements about lotteries. The U.S. Court of Appeals for the Third Circuit struck down the ruling as it applied to the broadcasting of the winning numbers, but upheld the ban on lottery advertising (see *PCN IV*, pp. 42-43, *PCN V*, pp. 78-79).

NOTE: A compromise bill, H.R. 668, introduced by Rep. Peter Rodino (D-N.J.) passed the House Judiciary Subcommittee on Claims and Governmental Relations in early October. The bill, which is similar to the proposed Senate legislation, will be debated by full committee after the election recess.

27. HOUSE ARMED SERVICES COMMITTEE APPROVES PRESIDENTIAL CENSORSHIP PLAN BUT RULES COMMITTEE REJECTS IT

In 1950, Congress passed the Federal Civil Defense Act which gives the President broad emergency powers "whenever an attack on the United States has occurred or is anticipated." In October 1969, President Nixon issued an executive order which empowered the President, acting under the authority of the 1950 law, to establish a National Censorship Plan.

Under this plan, contended critics such as Rep. Les Aspin (D-Wisc.) and columnist George Will, the President can seize control of the nation's press. F. Edward Hebert, chairman of the House Armed Services Committee, disagreed: "Under this authority, the President cannot, I repeat, cannot control the media."

The law, which must be extended every four years, was approved by the House Armed Services Committee after thirty minutes of debate on July 25, 1974. The House Rules Committee held more extensive hearings on the legislation and, citing the bill's potential abuse, killed it on a 7-4 vote in September.

28. HOUSE SUBCOMMITTEE PUSHES BILL TO PUNISH MEDIA FOR CIA STORIES

The House Armed Services Subcommittee on Intelligence considering its bill (H.R. 18545) to amend the National Security Act of 1947, is planning further hearings this year to toughen its proposal to stop national security leaks (see *PCN V*, p. 60).

The bill was introduced by Subcommittee Chairman Lucien Nedzi (D-Mich.) and would require the director of the CIA to "develop appropriate plans, policies and regulations" for the dissemination of information.

The Subcommittee's earlier proposal to have the Attorney General prosecute violations of the regulations ran into trouble earlier this year when Justice Department officials testified that the bill did not confer penalties for violation of the regulations. The only penalties that would apply for violations of the Director's regulations under the Nedzi bill would be those penalties currently prescribed by existing criminal laws.

Subcommittee members hope to reach agreement during this session of Congress on a new wording of the bill to give the CIA additional statutory authority to penalize leaks of classified material.

NOTE: See *PCN V*, pp. 59-60 for other articles discussing the CIA's efforts to limit the Supreme Court's holding in the *Pentagon Papers* case which requires an evidentiary showing of a "clear danger" to the national security before any prior restraint on news reporting can issue against the media.

PROPOSED OFFICIAL SECRETS ACT STALLED IN SENATE (See this *PCN*, p. 17) 29.

CIA PRESS INJUNCTION BILL STALLED 30.

A draft amendment to the National Security Act proposed in July by CIA director William Colby is still pending in the Office of Management and Budget (see *PCN V*, p.59). The proposed legislation would allow the issuance of an injunction against publication of any news article containing information which the director of the CIA deemed as classified.

Media sources have viewed the Colby proposal as another attempt to legislatively void the *Pentagon Papers* decision which requires an evidentiary showing of a "clear danger" to the national security before any prior restraint can issue against the media.

DELAWARE SIGNED EDITORIAL BILL ADVISED UNCONSTITUTIONAL 31.

The Delaware General Assembly enacted a bill to require newspaper editorials to be signed by their authors. The bill was accompanied by a synopsis giving the following rationale for the measure: "Because editorials are often written in an attempt to influence legislation or influence the outcome of an election, the public is entitled to know the identity of the person writing the editorial, so that people may better judge its merits."

In July, the Delaware Supreme Court advised that the law would be unconstitutional on its face as an abridgement of freedom of the press. The court's advisory opinion relied on a 1960 Supreme Court decision that anonymous handbills are protected by the First Amendment, a recent Maine decision striking down a similar signed editorial bill (see *PCN III*, p. 19) and the Supreme Court's recent decision in *Miami Herald v. Tornillo* (see *PCN V*, p. 1).

Delaware Governor Sherman Tribbitt announced that he would abide by the advisory opinion and not sign the bill into law. But he added that such legislation would not be proposed if "the press was very mindful of its power and concomitant responsibility."

32. NEVADA CAMPAIGN SPENDING LAW STRUCK DOWN AS UNCONSTITUTIONAL PRIOR RESTRAINT

In 1973, the Nevada state legislature passed a campaign spending law which required all newspapers, radio and television stations to keep separate accounts on advertising for political candidates and to file those records with the Secretary of State. The statute also barred the press from accepting political ads from anyone but the candidate or "his authorized representative."

Challenging the law in a suit filed early this year, Cal Sunderland, publisher of the Winnemucca *Humboldt Sun*, claimed that the legislation burdened the press unnecessarily and placed the media in the role of policemen.

On October 9, a county District Court judge declared the campaign spending law unconstitutional, ruling that it "has a chilling effect on the process of legislative advertising, places a prior restraint on the publication thereof, and discriminates against specified media."

The state attorney general said he would not appeal the decision.

33. OKLAHOMA COURT VOIDS CHALLENGE TO PUBLICATION BAN OF NAMES OF DEAD VETS

In 1970, the Oklahoma legislature enacted a law which makes it a misdemeanor to display or publish the names of war dead "for the purpose of any anti-war, anti-police action or anti-draft demonstration." Violations were made punishable by a jail term of 30 days to one year, a fine of up to $500, or both.

A class action suit was brought in an Oklahoma state court seeking an injunction against enforcement of the statute and a declaration that it violated the First Amendment. The suit was filed on behalf of all persons intending to participate in an anti-war demonstration to be held in Cleveland County, Okla., on Labor Day, 1971, and on behalf of the state War Resister's League and the state chapter of the Vietnam Veterans Against the War.

The trial judge declared the law unconstitutional and temporarily enjoined its enforcement, but in January 1974, the Supreme Court of Oklahoma reversed without reaching the First Amendment issue. The court held that the class action plaintiffs had not met the proof requirements which are necessary in order to get an injunction in a case involving a criminal law.

An appeal was taken to the Supreme Court, but on November 11, the court declined review. That left the Oklahoma Supreme Court opinion, and hence the challenged law, in effect.

34. POLITICAL ADVERTISING CERTIFICATION REPEALED (See this *PCN*, p. 67)

II FREEDOM OF INFORMATION

Press Access to State & Federal Executive & Legislative Functions

The Presidency

1. FORD-NIXON TAPES AGREEMENT IS TEST CASE ON OWNERSHIP OF PRESIDENTIAL PAPERS

INTRODUCTION: WHO OWNS PRESIDENTIAL PAPERS?

The issue of whether a former President owns—and has the right of exclusive access to—documents prepared during his Administration has never been resolved.

Most past Presidents have treated their papers as their own property but most have also deposited their materials with the Library of Congress or in presidential libraries with varying provisions of public access.

In an agreement signed by General Services Administrator Arthur F. Sampson on September 6 (the day before the pardon), former President Richard Nixon was granted not only ownership rights but full authority to control access to all documents and tapes accumulated in the White House during the Nixon Administration. Subject to certain time limitations, Nixon was also given the right to destroy all of his presidential materials.

Thus, not only was Nixon claiming title to original documents with an estimated value of millions of dollars, he was asserting a right to deny access to information about his presidency. Not surprisingly, representatives of the news media, the academic world, law enforcement and members of Congress voiced strenuous objections to the Nixon-Sampson agreement on grounds both of property rights and access.

2. TERMS OF THE NIXON-SAMPSON AGREEMENT

1) **Ownership**. Nixon was recognized as the "owner and custodian" of the materials. He was given "all legal and equitable title" to the White House documents and tapes, including "all literary property rights."

2) **Custody.** The materials were to be transferred from the White House and deposited in a storage facility near San Clemente, owned by the government and maintained at public expense.

3) **Access**. The agreement recognized that Nixon had "sole right and power of access" to the materials. Entrance to the storage facility would require the use of two keys, one in the possession of Nixon and the other controlled by the Archivist of the U.S. All requests for access to the materials would be referred to Nixon. If a subpoena was issued to the government to produce any of the materials, Nixon would be immediately notified so he could raise "any privilege or defense" he might have.

4) **Preservation**. Under the agreement, all the Nixon tapes would be destroyed at the time of Nixon's death or on September 1, 1984, whichever occurred first. Nixon could also destroy any specific tapes after September 1, 1979. All documents other than tapes would be stored for three years, during which time Nixon could reproduce them but could not remove any originals. After three years, he could withdraw the original documents and dispose of them as he saw fit.

The agreement was supported by a legal memorandum from Attorney General William Saxbe which concluded that presidential papers are owned by the President involved. This conclusion was largely based on tradition—most Presidents from the time of George Washington, according to the memo, have regarded White House papers and historical materials "whether of a private or official nature" as their own property.

Other commentators pointed out that case law supports the general proposition that documents prepared by public officials conducting official business on government time and using government materials belong to the government, not to the individual government official. They also observed that past practice has not been uniform—that, in fact, other Presidents and public officials have allowed the government to assume control of their papers.

SPECIAL PROSECUTORS OBJECTIONS 3.

When then Special Prosecutor Leon Jaworski expressed concern that implementation of the agreement would hinder his access to materials needed in Watergate trials, President Ford agreed to keep the Nixon documents and tapes under White House control pending further discussions with the Special Prosecutor's Office.

CONGRESSIONAL ACTION 4.

Members of Congress also acted in opposition to the Nixon-Sampson agreement. On October 4, the Senate passed (by a 56 to 7 vote) a bill introduced by Sen. Gaylord Nelson (S. 4016) that provided for continued government control of the Nixon presidential materials. The bill also directed GSA to issue regulations allowing general access to the materials except for national security information or in cases where disclosure "is likely to impair an individual's right to a fair and impartial trial." Similar measures proposed in the House were not acted on before the election recess.

COURT ACTION: NIXON AND NEWS MEDIA LAW SUITS 5.

With the tapes still being held in the White House temporarily, attorneys for former President Nixon filed suit in federal court on October 17 seeking immediate implementation of the Nixon-Sampson agreement. The suit claimed that the delay in implementation interferred with Nixon's contractual rights and inhibited his ability "to protect the constitutionally based privilege of confidentiality in his presidential materials."

Four days later, *The Reporters Committee, the American Historical Association,* the *American Political*

Science Association and several individual reporters, historians and political scientists filed suit seeking to void the Nixon-Sampson agreement, contending that the presidential materials belonged to the Government and that the public, subject to certain safeguards, should have access to them. The suit said that the presidential documents "constitute valuable, irreplaceable information resources of profound importance to plaintiffs in the conduct of their professions," and that journalists and historians would be "irreparably injured" if ownership and custody of the materials were transferred to Richard Nixon.

Columnist Jack Anderson filed a separate action in opposition to implementation of the Nixon-Sampson agreement. The Special Prosecutor's office also opposed the Nixon suit.

6. THE TEMPORARY RESTRAINING ORDER

On October 22, U.S. District Judge Charles R. Richey issued a temporary restraining order barring the Ford Administration "from effectuating the terms and conditions" of the Nixon-Sampson agreement. He ordered that all the materials be kept at the White House pending resolution of the ownership question. Nixon and former White House employees who are defendants in the Watergate trial were given access to the materials but only for the purpose of preparing testimony.

Judge Richey also said he would allow access in response to subpoenas or a request from the Special Prosecutor and "for purposes of current government business." He insisted that during any search of the materials a representative of the Ford White House and a Nixon representative both be present and that they "shall take such steps as are necessary to assure that the search for and copying of said materials will in no way destroy or affect the original character of any of the materials . . ."

Several days following Judge Richey's ruling, the American Civil Liberties Union filed a suit on behalf of the Committee for Public Justice, an organization composed of authors, lawyers and historians, claiming a right to access under the Freedom of Information Act to all presidential tape recordings subpoenaed by the House Judiciary Committee in its impeachment investigation.

7. PRESIDENT FORD & THE PRESS: AN ASSESSMENT OF THE PRESS OFFICE BY A WASHINGTON CORRESPONDENT

"...I hope the White House Press Corps is ready for another Ron. I'm a Ron, but not a Ziegler, I can tell you that..."

—White House Press Secretary Ron Nessen at his first briefing for reporters, September 20, 1974.

Relations between the Washington press corps and the White House, which deteriorated badly in the post-Watergate period of the Nixon Administration, have improved somewhat under the new President. For one thing, the President himself—the best news source, in most cases—is more available and open to reporters.

In the view of many White House correspondents, however, the level of White House candor is still not what it should be, and the availability of full and accurate information is still a problem to be dealt with by the working press. In some ways, the role of the reporter is harder in the Ford Administration because of the inexperience and (hopefully temporary) ineptness of the White House Press Secretary and his staff.

Press Secretary Ron Nessen, a former *NBC News* correspondent who was drafted from the press room by President Ford after his first Press Secretary, Jerald terHorst, resigned in a dispute over his own lack of access to information (see this *PCN*, p. 15), meets with the President for a half hour every morning before facing reporters at the daily White House press briefing. Nessen's style is to try to get Ford's thinking on current issues by discusssing them directly with Ford and his senior advisors.

Leaving the administrative details of running the Press Secretary's office to his subordinates, Nessen monitors as many private White House meetings as he can, and later provides reporters with summary "fills" of the discussions.

Briefing Book

Unlike former President Nixon's press secretary, Ronald Ziegler, who memorized or "winged" his answers to reporters' questions—acquiring in the process a reputation as a dissembler and artful dodger—Nessen has aimed for concise and accurate responses, even to the point of preparing a daily briefing book with the answers to all the likely questions written out and filed by subject.

Nessen's technique is to distill every question down to its general subject area, look up the subject in his notebook and read back the answer. This leads to some confusion when Nessen's prepared answer fails to fit the question. He has been known to chide reporters for not asking questions, the answers to which he has in his notebook. But when a question is asked for which he has no written answer, he frequently is stumped for a response. And there are times, just as in the Nixon White House, when the Press Secretary is under strict orders not to take questions dealing with particularly sensitive subjects.

This happened in November, for instance, when the White House and the Special Watergate Prosecutor reached a compromise agreement on access to the Nixon tapes. On many foreign policy questions, Nessen refers the reporter to the State Department, which refers him

back to the White House, and so on. One correspondent told Nessen he was engaging in a "ping pong strategy," designed to wear down the press.

In the Ford White House, routine press queries are handled promptly by an increasingly efficient staff of deputy and assistant press secretaries, who can also help reporters reach senior staff aides. One thing never changes, regardless of who is President: White House aides don't like to return reporters' phone calls, and will avoid doing so whenever possible.

8. GERALD TERHORST RESIGNS AS PRESS SECRETARY, CITING INCORRECT INFORMATION

On September 8, presidential press secretary Jerald terHorst resigned his post because of President Ford's pardon of Richard Nixon and because he felt he was being kept in the dark about important White House decisions.

TerHorst said he had not been told about the Nixon pardon until the day before it was announced.

He also said that he had been misled by high administration officials on a number of different matters, and that this caused him to issue misleading statements to the news media.

Besides the pardon, terHorst had been told by White House officials that Alexander Haig would remain in the Ford White House. Two days later it was announced that Haig would probably become Supreme Commander of NATO.

Also, terHorst relayed to the press an assurance from the administration that a recent White House visit by Republican National Chairman George Bush was merely routine. The next day Bush was named U.S. envoy to China.

Before coming to the White House, terHorst was Washington bureau chief for the Detroit *News*. He recently returned to the *News* as a Washington columnist.

9. NETWORKS AGREE TO COVER FORD SPEECH LIVE AFTER PROTESTS BY WHITE HOUSE

On October 15, President Ford was scheduled to make a major economic address before the Future Farmers of America in Kansas City.

Prior to the speech, the three networks had decided not to give it live coverage.

This decision, however, did not sit well with the White House. Shortly before noon on the day of the speech, a White House official telephoned Frank Jordan, chief of the *NBC* Washington Bureau and head of the network news pool committee, with a formal request for live network news coverage.

The networks agreed to the presidential request and gave the speech live coverage.

White House press secretary Ron Nessen said the request was not tantamount to an order. He described the speech as "a special speech...directed at the people."

10. NETWORKS AGREE TO COVER FORD SPEECH LIVE AFTER PROTESTS BY WHITE HOUSE

Shortly after Gerald Ford became President, *NBC*, *ABC*, and *CBS* each asked for an exclusive presidential interview.

The first White House response came in mid-October, when Press Secretary Ron Nessen offered to arrange an interview between Ford and *CBS* correspondent Walter Cronkite. As Nessen asked that the interview be aired shortly before the November 5 elections, *CBS* declined the offer, citing its potential to influence the outcome of close congressional races. The network asked Nessen to reschedule the interview.

Nessen did not respond to the request. Instead, there was an unattributed statement—*CBS* says it came from the White House—saying that the network had rejected the offer because of its bitterness over the Future Farmers of America incident (see above).

Nessen then offered the interview to *ABC*. Although *ABC News* president William Sheehan agreed with *CBS*' decision to postpone, he said that *ABC*'s plan was to film a non-political "travelogue" at Camp David, and the network made a tentative decision to accept Nessen's offer.

With the interview scheduled for two days before the elections, *ABC* sent camera crews to Camp David on October 26. Shortly thereafter, however, the network reversed its decision and postponed the interview.

Federal Legislative

11. CONGRESS OVERRIDES FORD VETO OF FREEDOM OF INFORMATION ACT

The House of Representatives approved in March a series of amendments (H.R. 12471) designed to make the 1966 Freedom of Information Act more useful and accessible to the press and public (see *PCN IV* p. 35). On May 30, the Senate approved its version of the bill (S. 2543) introduced by Sen. Edward Kennedy (D-Mass.). For a comparison of both bills, see *PCN V*, p. 55-56.

12. CONGRESSIONAL CONFERENCE REPORT

The Conference Committee chaired by Kennedy and Rep. William S. Moorhead (D-Pa.) met in late August to work out a compromise bill between the two houses. Reacting to a veto threat from President Ford, the conferees modified the bill to meet objections he raised in an August 20 letter to Kennedy.

Rep. John E. Moss (D-Ca.), chairman of the House Subcommittee on Information and author of the 1966 FOI Act, apparently felt the conferees went too far in meeting Ford's objections. He walked out of the Conference meeting saying, "I can't sign this."

The Conference Committee nevertheless voted 4-3 to approve the report. In early October, the Senate approved the conference report by voice vote with only Sen. Roman Hruska (R-Neb.) dissenting. On October 7, the House of Representatives voted nearly unanimously (349-2) also to accept the report and to send it to President Ford to be signed into law.

As passed by the Congress, the bill provided for:

- Discretionary authority in the Civil Service Commission to impose up to 60 days suspension without pay for federal employees who withhold information "without a reasonable basis in law" after a written finding by the court of circumstances surrounding the withholding suggesting arbitrary and capricous action by the official;
- *In camera* court review of documents withheld from the public by agencies under any of the nine exemptions specified in the original 1966 FOI Act;
- Access to police investigatory files only to the extent that their release would not "interfere with enforcement proceedings, deprive a person of a right to a fair trial or an impartial adjudication, constitute a clearly unwarranted invasion of privacy, disclose the identity of a confidential police source, or disclose investigative techniques and procedures;"
- Attorney's fees and court costs to be awarded to successful plaintiffs only upon a showing of a "general public benefit;"
- The promulgation of regulations within government agencies establishing uniform fee schedules and recovery of the direct costs of search and duplication;
- A 30-day period for defendants to respond to complaints filed in court alleging violations of the Act;
- An expedited appeals process for all FOI cases;
- A 10-day administrative time limit within which agencies must respond to information requests and a 20-day time limit within which the agency head must hear an appeal before the aggrieved information seeker can go to court to contest the agency's information refusal;
- A time extension beyond the 10-day response period when the agency can show "exceptional circumstances" warranting a time extension;
- Withholding of information where specifically authorized by statute in the interest of "national defense or foreign policy." In addition, courts hearing challenges to the inclusion of documents in this category and viewing them *in camera* were specifically instructed to give added weight to an intelligence agency's determination that the material pertained to national defense;
- The release of information "reasonably segregable" from other records exempted from disclosure;
- An expanded application of the Act to reach the Executive Office of the President but not including the President's immediate personal staff or other Presidential advisory positions;
- An index of material available to the public to be compiled and published quarterly.

FORD VETO 13.

On October 17, Ford vetoed the bill. He said that although the conferees had amended several objectional provisions of the proposed bill, they had not gone far enough to resolve several "significant problems."

Ford expressed disapproval of the provision allowing federal court judges to substitute their judgment for that of intelligence agencies and release information after an *in camera* review of the documents if they disagreed with the agency determination that disclosure would endanger the national security. Instead, Ford suggested a provision requiring federal judges to "automatically" uphold a security classification if any "reasonable basis" to support it could be found. He termed the conference provision a threat to "military or intelligence secrets and diplomatic relations."

Ford also singled out the ten-day administrative time limit given agencies to determine whether or not to furnish requested documents and the twenty-day appeal provision as "simply unrealistic in some cases."

In addition, Ford took issue with the investigatory files disclosure provision. He commented that "millions of pages of FBI and other investigatory law enforcement files would be subject to compulsory disclosure." Ford said law enforcement agencies do not have the personnel necessary to monitor information requests and give out those documents authorized for release.

FORD OFFERS SUBSTITUTE BILL 14.

While intensive lobbying efforts to override the veto took form on Capitol Hill, the White House prepared a substitute Information Bill it would accept. Those suggestions, sent to Congress one week after the veto, provided for:

- Citizens to pay all costs over $100 incurred by an agency while reviewing documents for release, whether any documents were found or not;
- Agencies to be allowed either 65 working days or 3 months to respond to information requests;
- Investigatory files to be entirely exempt from disclosure;
- Agencies to seek "unlimited" time extensions from the U.S. District Court when responding to information requests;
- Federal judges to release classified documents only after a finding that there was no reasonable basis to uphold the agency's security classification.

15. **NNA SPEARHEADS OVERRIDE EFFORT**

Members of the National Newspaper Association (NNA), one of the groups working most actively to override the veto, met with administration officials in mid-November and learned that the White House was willing to negotiate several of the substantive provisions of the Information Act. According to Terry Maguire at NNA, White House officials were adamant, however, with regard to the *in camera* review standards and the costs to be passed on to information seekers.

Other newspaper and public interest groups working to override the veto include the American Society of Newspaper Editors, the Radio Television News Directors Association, Sigma Delta Chi, Common Cause, Congress Watch, Consumer Federation of America, the U.A.W. and the A.C.L.U.

In a surprise move November 14, the American Newspaper Publishers Assocition came out in support of the Ford compromise proposal saying it represented the best chance for early enactment of an information bill. The Association said if the Ford bill were enacted and experience with it proved unsatisfactory, it would urge further amendment.

The House and Senate voted in late November to override the Ford veto. The House vote came Nov. 20 and passed by a 371-31 margin—over 100 votes more than the required two-thirds needed to override a Presidential veto. The following day, the Senate voted 65-27 also to override the veto.

The bill becomes effective Feb. 19, 1975.

NATIONAL SECURITY

16. **HOUSE BILL WOULD LIMIT NATIONAL SECURITY CLASSIFICATIONS**

In December 1973, Rep. William Moorhead (D-Pa.) introduced a bill (H.R. 12004) to add a new section to the Freedom of Information Act establishing a uniform system of "national security" information classification. The bill was referred to the House Foreign Operations and Government Information Subcommittee of the Government Operations Committee where hearings were held during the summer.

Currently, departmental agencies may classify national defense information according to their own regulations and legally withhold classified information from the public under exemption (1) of the Freedom of Information Act.

The proposed legislation, titled the "Freedom of Information Act Security Classification Amendments of 1973," would allow information to be designated as "Top Secret," "Secret" or "Confidential."

"Top Secret" information, under the bill, is defined as material which could cause "exceptionally grave damage" to the national security. "Secret" information would be that material capable of causing "serious damage" to the national defense if released to the public and "Confidential" information that which would cause "damage" to the national defense.

In addition, the bill stipulates that information may not be classified in order to "conceal incompetence, inefficiency, wrongdoing, administrative error or to avoid embarrassment to any individual or agency."

In July, Justice Department officials testified that a provision in the bill establishing a nine member Classification Review Commission—six of whom would be chosen by the President from persons recommended by Congress—was unconstitutional because it encroached on the Executive's authority to ultimately determine national security classifications.

Subcommittee members are currently redrafting the proposal and hope to hold further hearings later this year.

17. **PROPOSED OFFICIAL SECRETS ACT STALLED IN SENATE**

Two bills which reform the Federal Criminal Code—S. 1400, introduced by Sen. Roman Hruska (R-Neb.) and sponsored by the Administration, and S. 1, introduced by Sen. John McClellan (D-Ark.)—have been combined into one legislative package by the Senate Subcommittee on Criminal Laws and Procedures.

The combined form of the bills is still before the subcommitte and, because of its length and complexity, will probably not be acted upon this session. However, according to the subcommittee, McClellan plans to re-introduce the package early next year.

Media groups, including *The Reporters Committee*, opposed both S. 1400 and S. 1, arguing that the bills threaten the press' newsgathering capabilities by making it a crime to publish certain broad categories of government information, including almost all information relating to the "national security" along the lines of the British Official Secrets Act (see *PCN IV*, p. 35 and *PCN II*, pp. 1-3).

18. **CIA PRESS INJUNCTION BILL STALLED** (See this *PCN*, p. 12)

19. **NATIONAL SECURITY LEAKS BILL PENDING** (See this *PCN*, p. 11)

20. **CONGRESSMAN FACES POSSIBLE CENSURE BECAUSE OF NEWSPAPER ARTICLE** (See this *PCN*, p. 36)

21. **CONGRESS MOVES TO OPEN MORE OF ITS SESSIONS & AGENCY MEETINGS**

The House and Senate are both considering bills which would open Congressional committee and federal regulatory agency hearings to the public (see *PCN V*, pp. 63-64).

Both bills call for public announcement of the date, place and subject of the meeting one week in advance, and provide that complete transcripts of all meetings be furnished. The bills contain exceptions allowing closure of meetings for national security matters, for "personal matters" and for matters involving "excessive invasions" of individual privacy.

Consideration is not expected during the current session on the House bill (H.R. 1000), but hearings on the Senate bill (S. 260) were held before the election recess.

During those hearings, representatives of the Securities Exchange Commission, the Civil Aeronautics Board and the Interstate Commerce Commission testified against the bill. They expressed fear of the chilling effect that open meetings would have on agency deliberations.

22. SENATE BILL TO STOP NEWS MEDIA EXCLUSION FROM U.S. BASES ABROAD

Sen. Mike Mansfield (D-Mont.) has authored an amendment to the Senate Foreign Assistance Act of 1961 prohibiting the President from authorizing funds to be spent for foreign assistance if American newsmen are excluded from foreign military bases constructed with U.S. funds or staffed by American military personnel. The amendment was sparked by the exclusion of reporters from military bases during the Vietnam war (see *PCN II*, p. 11).

The provision, contained in section 17 of the Foreign Assistance Act of 1974 (S. 3394) introduced in the Senate September 3 by Sen. John Sparkman (D-Ala.) would add a new section to the 1961 Act and replace a similar provision currently in effect under section 29 of the 1973 Foreign Assistance Act.

The Sparkman bill was recommitted to the Senate Foreign Relations Committee October 2. It is expected to be reported out of Committee again later this year.

PRIVACY/SECRECY

23. **CONGRESS FAVORS OMNIBUS PRIVACY**
24. **SECRECY BILLS GIVING INFORMATION TO**
25. **POLICE BUT NOT MEDIA: HR 1673, S 3418**
26. **SENATE CRIMINAL JUSTICE BILL (S 2963)**
27. **JUVENILE JUSTICE BILL (S 821)** (See this *PCN*, p. 51)

TELEVISING CONGRESS

28. JOINT CONGRESSIONAL COMMITTEE URGES TELEVISED SESSIONS

Live television coverage of the House Judiciary Committee debate on impeachment was the first time that cameras were allows to broadcast a House committee's deliberations, and public acceptance of the experiment had apparently persuaded the House to permit coverage of the floor debate on impeachment (see *PCN V*, p. 83).

The Joint Committee on Congressional Operations recommended in mid-October that Congress install permanent television broadcasting facilities on the floor of both houses next session and allow commercial and public networks to cover its activities on a continuing basis. While the committee urged that camera locations should be fixed and unobtrusive and that filming of reactions to an on-going presentation discouraged, the report emphasized that "no control over the selection of materials for broadcast use" should be exercised by Congress.

In the report's only dissent, Sen. Jesse Helms (R-N.C.) said the result would be that Congressmen would perform for their constituents with oratory rather than persuade other members with debate.

Sen. Lee Metcalf (D-Mont.), chairman of the comittee, plans to introduce a resolution encompassing the report's recommendations when Congress reconvenes in November.

29. 20th CENTURY FUND TASK FORCE RECOMMENDS TELEVISING CONGRESS

The recommendation of the Joint Committee on Congressional Operations to televise Congressional floor debate was echoed by a Twentieth Century Fund Task Force in a report issued in late October. The Task Force proposed that Congress authorize the Corporation for Public Broadcasting to arrange the physical facilities and to make broadcast coverage available to all networks. If Congress itself provided the coverage, said the Task Force's report "Openly Arrived At," the public might suspect that "only what the legislature believed to be the best aspects of the institution were being shown."

30. AMERICAN BAR ASSOCIATION URGES LIMITATION ON COMMITTEE BROADCASTS

In August, the 1974 Annual Meeting of the American Bar Association reaffirmed a 20-year-old resolution urging Congress to provide "that no witness shall be compelled to give testimony in any [committee] hearing for broadcast by radio or television" unless the witness gives his written consent. The ABA pointed out that Congressional investigations often deal with subjects of civil or criminal proceedings, and that the effect of broadcasted hearings may jeopardize a witness' constitutional rights to a fair trial.

31. TELEVISED IMPEACHMENT IS 'PUBLIC'S BUSINESS': NEW YORK BAR ASSOCIATION

Prior to former President Nixon's resignation, the Special Committee on Communications Law of the New York City Bar Association advocated the televising of the House and Senate impeachment proceedings. If the debate were broadcast, the report said, the public would be able to satisfy itself that the proceedings were conducted fairly and that Congress was performing its duties seriously and intelligently, and, as a result, public confidence in Congress would be strengthened. "Most profoundly, impeachment and removal is the public's business and hence the public ought to be as well informed as possible."

Freedom of Information

Federal Executive

32. SENATE PANEL TO INVESTIGATE INFORMATION POLICIES OF REGULATORY AGENCIES; FTC POLICY CRITICIZED

Pursuant to Senate Resolution 253, the Senate Subcommittee on Consumers, chaired by Sen. Frank Moss (D-Utah), is presently conducting a study of information policies of the seven independent federal regulatory agencies, including the Federal Trade Commission, Federal Communications Commission, Federal Power Commission, Federal Maritime Commission, Interstate Commerce Commission, Civil Aeronautics Board, and Consumer Products Safety Commission.

In a September 3 memo to the Subcommittee, Stanley Cohen of *Advertising Age* and John Jenkins of the *Bureau of National Affairs*, journalists who regularly cover Federal Trade Commission news, recommended that the FTC: (1) rule upon requests for access under the Freedom of Information Act within ten days; (2) specify what requests for documents have been granted and place those documents in a "public reference file" within thirty days; and (3) publish a public calendar which lists all meetings between FTC staff and representatives of "outside interests," and open those meetings to the public.

33. FTC TO GIVE MORE DISCLOSURE OF COMMISSION VOTES

Many federal regulatory agencies disclose as a matter of policy not only the votes on final decisions, but votes on intermediate actions as well. Until recently, however, the Federal Trade Commission would reveal only the agency's final votes, even though many cases are not resolved until several years after an investigation has begun and intermediate votes have been taken.

Responding to criticism by journalists that its decisions have been made more secretively than those of other agencies, the FTC announced in September that it would disclose the intermediate votes of individual commissioners on a "broader" range of actions such as the rejection of a report of compliance and the provisional acceptance of a consent order.

34. ADVERTISING AGE MAY SUE FTC OVER CLOSED MEETINGS WITH CONSUMER GROUPS

On July 26, John Revett, a reporter for *Advertising Age*, was denied access to a closed meeting between the Federal Trade Commission and consumer group representatives (see *PCN V*, p.63).

Advertising Age Washington Editor Stanley Cohen protested to FTC chairman Lewis Engman. Cohen and John Jenkins, correspondent for the Bureau of National Affairs, met several times with FTC commissioners and attorneys. As a result of the consultations, the commissioners are considering proposals for reform of the agency's information policies.

Cohen anticipates that the FTC will open more of its meetings to the public and that it will acknowledge that the decision to bar Revett was unwarranted. If no such announcement is made, *Advertising Age* will consider taking legal action against the agency.

35. FTC EXCLUDES SOME MEDIA FROM BRIEFINGS

The chairman of the Federal Trade Commission, Lewis Engman, recently began regular press briefings on Wednesday mornings and closed them except to selected invitees, which include reporters for the *Associated Press, United Press International, Washington Post, Washington Star-News, New York Times, Time, Newsweek, Advertising Age*, and the Bureau of National Affairs *Antitrust and Trade Regulation Report*. Publications whose requests to attend have been rebuked include *Food Chemical News, Broadcasting Magazine, Of Consuming Interest* and *Business Week*.

An FTC spokesman said that Engman invited the correspondents on a selective basis so that he "won't have to worry about the prejudgmental problems by some reporters that are part of full and formal press conferences." The spokesman added that Engman chose those "who were the most knowledgeable about the FTC and who would ask the toughest questions."

On October 22, Sen. Warren Magnuson (D-Wash.) asked Engman to open the meetings to all members of the press. Noting that some publications which are excluded are in direct competition with publications which are allowed to attend, Magnuson said that "it would be a shame" if the FTC, which regulates competition among industries, "conferred a monopoly on Commission news to the selected publications." Engman has not responded to the letter.

36. MOST FAVORED MEDIA PROBLEMS

The Engman practice of regularly giving certain publications special benefits and granting them access to information which is withheld from others, is traditional in Washington. The "most favored media" organs have routinely accepted their preferential access without objection. Government agencies have therefore operated mainly on the same assumption.

However, in the last two years, the increase in alternative special publications—on civil rights, the environment, consumers, the aged, women, etc.—has put a great deal of stress on the most favored media concept, both ethically and legally.

Reporters for the establishment media compete for selected news breaks but are ethically uncomfortable with an institutionalized system of regular discrimination against the less favored media.

The less favored media reporters are now pressing government agencies for equal treatment, at least in formal press contacts, as illustrated by the FTC incident described above.

Some other aspects of the problem are:

• *White House*—In order to cover briefings and press conferences at the White House, a reporter must obtain a "press pass," of which there are about 1500. In response to a suit filed by Thomas Forcade of the Alternative Press Syndicate and Robert Sherrill of *The Nation*, who were denied accreditation, the Secret Service argued that it has full discretion to control access to White House grounds (see *PCN V*, p. 56).

• *Congress*—In order to cover Congress, a newspaper reporter must be a member of the Standing Committee of Correspondents of the House and Senate Press Galleries and must follow its rules. When Richard Strout of *The Christian Science Monitor* refused to agree to one of those rules (not to accept money from *Voice of America*) his membership was terminated (see *PCN V*, p. 64).

• *Private Media Groups*—Nor is the practice limited to government. Godfrey Sperling of *The Christian Science Monitor* breakfast club—one of several in Washington—has held over 500 meetings for newsmen and has featured such public figures as Sen. Henry Jackson, Henry Kissinger, Arthur Burns, George Bush, Eliot Richardson and Pat Buchanan. The club has a core of about 35 of the "most favored media." It excludes the *Associated Press, United Press International, Reuters* and the three broadcast networks on the grounds that the instant nationwide coverage of the wires and networks would scoop the other reporters.

While Sperling said he never turns down a request from a reporter to attend, members of the club say that only a limited number of selected publications are notified when a breakfast is arranged. The group is conscious of the restrictions this represents and has sought to address them. At the same time, the group implicitly understands that the number of reporters and the type of publications which are invited according to Sperling, "are subject to the prevailing mores in this town."

37. RECORDS OF FED. ENERGY AGENCY MEETINGS TO BE MADE PUBLIC (See this *PCN*, p. 36)

38. HEW ADOPTS EXPEDITED FOI POLICY

In August, the Department of Health, Education and Welfare issued new departmental freedom of information regulations which allow more public access to information and which expedite the handling of requests for information. It was the first revision of the regulations since they were instituted in 1967.

The new regulations require that an initial request for information be responded to within 10 working days and that an appeal from a denial of access be acted on within 20 working days from when the request for review was filed. These provisions are identical to those contained in the amendments to the Freedom of Information Act that President Ford recently vetoed (see this *PCN*, p. 15).

The new regulations specify particular types of records which will be made available to the public. These include official correspondences between HEW officials and non-agency individuals or groups and records relating to research and development projects.

Records specifically made unavailable under the new regulations include intra- and inter-agency memos reflecting the views of the writer or other people, and all investigatory files compiled for law enforcement cases that are still open. If a case is closed, the investigatory files will remain unavailable if they reveal the names of informants, release trade secrets or reveal policy recommendations.

TVA CHARGING MEDIA FOR SUPPLYING AGENCY INFORMATION ON COAL RESERVES 39.

The Tennessee Valley Authority (TVA) is a congressionally chartered public corporation subject to the federal Freedom of Information Act. In August, a reporter for the *Whitesburg* (Ky.) *Mountain Eagle* asked TVA for documents relating to coal reserves TVA expected to purchase. TVA billed the paper for $108.

A spokesman for TVA explained the billing to the *Eagle* noting that it took a file clerk 16 hours at an hourly rate of $6.75 to locate the requested information. The spokesman also told an *Eagle* reporter that this was the first time a newspaper has been charged for such information.

NOTE: The Freedom of Information Act does not make provision for search fees for information although reasonable copying charges may be assessed.

COURT OPENS SECRET ADVISORY BOARD MEETINGS 40.

The Federal Advisory Committee Act, 5 U.S.C. App. I § 1 *et seq.*, requires that there be full public access to all advisory committee meetings, that there be sufficient public notice of such meetings and that full records of the meetings be kept. Exemption 5 of the Freedom of Information Act, 5 U.S.C. 522, exempts intra-office documents from the general disclosure provisions of that Act.

In August, the Commerce Department held two closed sessions of its Travel Advisory Board, a committee made up of non-government employees. The Department claimed that since intra-office documents were discussed

at the meetings. Exemption 5 allowed it to hold secret sessions.

Later in August, the Aviation Consumer Action Project filed suit against the Commerce Department because of the secret sessions.

On September 6, U.S. District Court Judge William Bryant ruled that the Department had violated both the Freedom of Information Act and the Federal Advisory Committee Act in holding the secret sessions. The Court held that Exemption 5 cannot be invoked as to "documents which have been. . . disclosed by the agency to members of an advisory committee who are not full-time employees. . . of the Federal Government." The Court enjoined the Department from excluding the public from advisory committees.

41. **AMERICAN LIBRARIES ASSOCIATION WRITER FIRED FOR SEEKING FOI INFORMATION** (See this *PCN*, p. 70)

42. **US COURT SAYS OFFICIAL NAVY AUDITS STAY SECRET UNDER FOI ACT**

In 1973, the Department of the Navy compiled two reports concerning alleged over-expenditures from 1969 to 1972. One report was prepared by the Inspector General of the Navy, and it contained recommendations of disciplinary action because of the over-expenditures. The other report was an audit prepared by the Auditor General.

As part of an investigation into Naval over-expenditures, reporters Mark McIntyre and Brit Hume (both former Jack Anderson associates) requested copies of the Navy reports on February 12, 1973.

On March 16, 1973, the Navy denied the request, and on June 21, 1973, the reporters filed a Freedom of Information Act suit in federal court to require disclosure of the reports. The suit was handled by the FOI Clearinghouse.

On October 3, 1974, District Court Judge Thomas Flannery held that the Freedom of Information Act does not require the Navy to produce the reports. Flannery said that the Inspector General's report was within Exemption 7 of the Act ("investigatory files compiled for law enforcement purposes") because it recommends disciplinary action. He also said that the Auditor General's report was within Exemption 5 ("inter-agency or intra-agency memorandums") since it reflects the opinions of the auditor concerning internal Navy operations.

An appeal is uncertain.

REPORTER SUES AMTRAK FOR DATA 43.

In March 1973, Amtrak's board of directors refused to supply minutes of its meeting to *Washington Star-News* reporter Stephen M. Aug (see *PCN V* p. 62). Amtrak, a congressionally-charted corporation, is subject to the Freedom of Information Act.

In July 1974, Aug filed a suit in federal court claiming that he was entitled to the documents under the Act.

In its answer, Amtrak claimed that it was entitled to withhold the minutes under Exemption 5 of the Act, allowing non-disclosure of intra-agency memorandums.

It also stated that Aug's request was overly broad and did not present a request for identifiable records as required by the Act.

PENTAGON RELEASES MY-LAI MASSACRE STUDY SHOWING COVER-UP 44.

In 1969, the Secretary of the Army ordered a detailed investigation into the adequacy of the preliminary Army reports on the My Lai massacre.

The result of this investigation was the four volume Peer Commission Report, which was submitted to the Pentagon in March 1970.

In 1972, Congressman Les Aspin (D-Wisc.) requested that the Defense Department make the Report public. Aspin filed a Freedom of Information Act suit in federal court when the Defense Department refused his request.

In 1972, District Court Judge John Pratt dismissed Aspin's suit, holding that Exemption 7 of the Freedom of Information Act ("investigatory files compiled for law enforcement purposes") allowed the Defense Department to keep the Report secret.

This decision was affirmed by the United States Circuit Court of Appeals in 1973.

On November 13, 1974, the Defense Department finally opened two volumes of the Report to the public. A Pentagon spokesman said the two volumes still being withheld contained raw investigatory material that might harm individuals mentioned in them.

One of the volumes that was released contains the analyses and conclusions of the Peer Commission; the other contains documentary evidence. The report revealed that there had been a massive attempt by the Army to cover up the massacre.

NETWORKS USE FOI FOR NIXON PAPERS 45.
(See this *PCN*, p. 66)

46. SUPREME COURT FREEDOM OF INFORMATION CASES

NOTE: The following four Freedom of Information Act (FOIA) cases recently came before the Supreme Court. Although they were brought by non-media litigants, they are included in this *Newsletter* because there is no distinction under the FOIA between requests for disclosure made by consumer organizations, for example, or by the news media. The FOIA requires federal agencies to disclose documents at the request of "any person," regardless of that person's purpose in seeking the information.

The four cases discussed below involve the scope of two of the nine exemptions to the FOIA disclosure requirement.

Left standing because of the Supreme Court's decision against review were two appellate court precedents broadly interpreting Exemption 7 of the Act ("investigatory files compiled for law enforcement purposes") in favor of the government.

Both cases which the Supreme Court agreed to review deal with the scope of Exemption 5 ("inter-agency or intra-agency" memoranda) and were decided against the government by the U.S. Court of Appeals.

47. US SUPREME COURT TO REVIEW APPEALS COURT FOIA RULING MAKING PUBLIC NLRB MEMOS

Sears, Roebuck & Co., involved in a dispute with a union local, complained in April 1971 to the National Labor Relations Board (NLRB). After the NLRB refused to issue an unfair labor practice complaint against the union, Sears unsuccessfully sought to obtain from the board copies of NLRB "advice memoranda" issued in its own case and similar cases. "Advice memoranda" are sent by the NLRB's Washington office to Regional Directors, instructing them on the handling of labor

Sears then filed suit under the Freedom of Information Act (FOIA), arguing the memoranda should be disclosed because they set out what amounts to rules of labor law to be applied in a particular case and future cases. The government relied on Exemption 5 ("inter-agency and intra-agency memorandums") in resisting disclosure.

The court ordered the NLRB to hand over the documents, finding that the memoranda should be disclosed because they contained not mere opinions of agency officials, but rather "instructions mandatory in substance if not in form." The court also quoted a provision of the FOIA which authorizes disclosure of "instructions to staff that affect a member of the public."

The decision was recently affirmed by the U.S. Court of Appeals for the District of Columbia Circuit on the basis of its own decision in the *Grumman* case (see this *PCN*, p. 23).

The NLRB appealed to the Supreme Court, which agreed on October 15 to review the case. The court also agreed to review *Grumman*. The two cases raise similar important issues regarding the scope of public access to internal government memoranda which form the basis for an agency's actions and decisions.

48. US APPEALS COURT RULES THAT FOIA DOES NOT COVER AUTO SAFETY AGENCY PROBES; US SUPREME COURT DECLINES REVIEW

Ralph Nader and Clarence Ditlow, an environmental attorney with Nader's Public Interest Research Group, filed suit under the Freedom of Information Act (FOIA) after they were refused access to correspondence between the National Highway Traffic Safety Administration (NHTSA) and automobile manufacturers about pending investigations of safety defects in new automobiles.

Although such correspondence is routinely made public at the close of the NHTSA's preliminary inquiry, Nader and Ditlow argued that earlier disclosure was necessary to allow the public to comment or submit evidence at the critical early stages of an auto safety investigation.

The government argued that the correspondence being sought was exempt from disclosure under Exemption 7 of the FOIA ("investigatory files compiled for law enforcement purposes"). Nader and Ditlow answered that an investigatory exemption only applies if there is an enforcement proceeding, and no such proceeding had been initiated in this case.

A federal district court ordered disclosure, on the ground that although the files sought could conceivably lead to an enforcement proceeding, their disclosure would not cause serious harm to any law enforcement aim.

The U.S. Court of Appeals for the District of Columbia reversed, holding that it was error to have required a showing of harm. The court said that, as enacted by Congress, Exemption 7 applied wherever agency documents have a law enforcement purpose, and to add any further requirements would be to "second-guess the Congress."

Nader and Ditlow appealed to the Supreme Court, seeking reversal of the Court of Appeals opinion because it appeared to authorize blanket agency claims that any investigative or research related information can be kept secret under Exemption 7.

In October, the Supreme Court let the Court of Appeals opinion stand.

49. SUPREME COURT LETS STAND RULING THAT NLRB FILES ARE SECRET UNDER FOI ACT

A South Carolina textile manufacturer was refused access by the National Labor Relations Board (NLRB) to union affidavits and other documents collected by the

Board in the course of an investigation into irregularities in two union representation elections conducted in 1972 at the company.

In January 1973, the company filed suit under the Freedom of Information Act (FOIA). Denying that the documents being sought were subject to disclosure, the NLRB cited Exemption 7 of the FOIA ("investigatory files compiled for law enforcement purposes").

In January 1974, the U.S. Court of Appeals for the Fourth Circuit upheld the NLRB. The court gave a broad interpretation to Exemption 7, holding that, "Though practices vary, if aimed at enforcement of the NLRA, we think they are for 'law enforcement purposes.' "

The court also said that if a company is known to have access to union affidavits taken in the course of an NLRB investigation, union members may be reluctant to speak freely.

The company appealed to the Supreme Court, arguing that the information it needed to test the validity of a union representation election had been "cloaked in secrecy in contravention of a statute designed and intended to provide for freedom of information," and that the court's interpretation of Exemption 7 "would virtually render any administrative agency immune to do as it wished in secrecy."

In October, however, the Supreme Court denied review, with the effect that the Fourth Circuit opinion was left standing.

50. SUPREME COURT TO REVIEW APPEALS COURT RULING THAT RENEGOTIATION BOARD INFORMATION MUST BE MADE PUBLIC

In April 1968, the federal Renegotiation Board ordered Grumman Aircraft Engineering Corp., a government contracter, to repay the government $7.5 million in excessive profits for 1965. Grumman asked the board for access to documents explaining decisions made in 14 similar cases by its local units, the Regional Boards. The Board refused, citing Exemption 5 ("inter-agency and intra-agency memorandums") of the Freedom of Information Act (FOIA).

Grumman filed suit, arguing that because the Regional Boards have decision-making power, their determinations constitute "Final Opinions" subject to disclosure under the FOIA. The Renegotiation Board denied the documents requested were final opinions, and argued that disclosure would impair the decisional process of a government agency.

A federal court initially refused disclosure, but the U.S. Court of Appeals for the District of Columbia Circuit reversed and sent the case back for further proceedings. The District Court ordered disclosure, and in July 1973, the appeals court hearing the case a second time affirmed.

The court held that Exemption 5 applied to agency "documents composed exclusively for purposes of assisting policy formulation" but not to "those which serve to reflect policy already made and announced." Although conceding it may sometimes be difficult to draw this line, the court ruled that the documents sought by Grumman were clearly documents justifying final agency decisions, and hence subject to disclosure.

On October 15, the Supreme Court agreed to review the case, together with another case also involving the scope of the "inter-agency and intra-agency memoranda" exemption to the FOIA (See *Sears, Roebuck* case, this *PCN*, p. 22).

51. JUSTICE STEWART SAYS PRESS HAS NO CONSTITUTIONAL RIGHTS TO GOVERNMENT INFORMATION: PRAISES WATERGATE PROBE

On November 2, United States Supreme Court Justice Potter Stewart gave an address entitled "Or of the Press" at Yale University.

Stewart said that the press was performing its proper role as an active institution in relation to the Watergate scandals.

Stewart also said that while the "press may publish what it knows," even if it involves the publication of stolen government documents, "there is no constitutional right to have access to . . . government information."

52. JUSTICE DOUGLAS SUGGESTS GOVERNMENT SUBSIDIES FOR NEWSPAPERS

On November 6, United States Supreme Court Justice William O. Douglas gave a speech at Fairleigh Dickinson University in Teaneck, New Jersey.

Douglas spoke about First Amendment powers that Congress has "to protect the press, [and] encourage publications."

Douglas advocated granting a postal rate subsidy to all environmental publications, "no matter the viewpoint being advanced," and to "country weeklies and small community newspapers."

53. FEDERAL INVESTIGATIONS TO TRACE NEWSLEAKS AT PENTAGON, STATE DEPARTMENT AND FBI (see this *PCN*, p. 37)

PUBLIC ACCESS RESTRICTIONS ON FEDERAL CRIME INFO

54. LEAA prior arrest records (See this *PCN*, p. 53)
55. FBI has new procedures (See this *PCN*, p. 52)
56. 13,000 May Day arrest records (See this *PCN*, p. 53)
57. Federal lawsuit to expunge old FBI info (See this *PCN*, p. 53)
58. U.S. Court opposes FDA media info (See this *PCN*, p. 45)

59. U.S. APPEALS COURT RULES INACCURATE FBI RECORDS MAY BE LIBELOUS & VIOLATE PRIVACY RIGHTS

The U.S. Court of Appeals for the District of Columbia Circuit recently decided an F.B.I. records case, the latest in a recent line of cases lending support to the idea that arrest and conviction records are matters of interest only to the particular law enforcement agencies and the particular individuals involved, and the related idea that a prior criminal record should be kept confidential even when it might be highly relevant and newsworthy in the judgment of a reporter.

On October 22, the court ruled by a vote of 2-to-1 that a lower court erred in refusing to hear a Texas man's suit for expungement of alleged inaccuracies from his F.B.I. file or an injunction prohibiting the F.B.I. from disseminating the uncorrected file.

Writing for the majority, Chief Judge David L. Bazelon ruled the F.B.I. has a "duty to take reasonable measures to safeguard the accuracy of information in its criminal files which is subject to dissemination."

Judge Bazelon found this duty implied in the federal statute authorizing the Attorney General to maintain criminal records (28 U.S.C. section 534) and in the rights of due process and privacy.

He also cited the common law of libel. The judge contended that if the F.B.I. has the right to disseminate inaccurate personal data without making any attempt to prevent inaccuracy, the agency would in effect have the right to libel the individuals concerned.

Judge Bazelon sent the case back to a lower court for a hearing to define exactly how the F.B.I. should go about safeguarding the accuracy of its files.

A dissenting judge accused the majority of ordering judicial oversight on the operations of the F.B.I., a function which he said belonged to Congress.

State

ALABAMA COURT OPENS SEALED ARREST FILES (See this *PCN*, p. 54) 60.

WASH. D.C. COURT SAYS PRIVACY VIOLATED BY PUBLICATION OF RAPE VICTIM NAME (See this *PCN*, p. 53) 61.

FLA. FOI LAW COVERS UNIVERSITY STUDIES 62.

The Florida attorney general ruled that the state's public records law does not exempt a "work product" or "working paper" from its inspection provision.

Atty. Gen. Robert L. Shevin made the ruling in response to an inquiry by a state legislator who asked whether a University of South Florida official could refuse to allow inspection of a student government study made by students but in the school administrator's possession. The official had claimed inspection was not required by virtue of a work product or paper exemption.

But the attorney general cited a 1973 state court decision which rejected the exception and said "the only relevant concern in deciding whether a document is a 'public record' is whether" it is in the "legal possession of a public official." The state law provides for the inspection of public records.

FLORIDA COURT SAYS FOI LAW COVERS CITIZEN ADVISORY GROUP MEETINGS 63.

The Palm Beach Town Council met in closed session to appoint a citizens' advisory zoning committee. The committee subsequently met with professional planning consultants in meetings which were closed to the public and at which no minutes were taken. The committee made zoning recommendations to the Town Council.

The town subsequently adopted a comprehensive zoning plan following public meetings before the council and the town zoning commission. The zoning plan was attacked in court by citizens who claimed that its adoption was invalid because of the non-public activities of the citizen's advisory group in violation of the state's "sunshine" law, which requires all state and local boards and commissions to meet in public.

A District Court of Appeals invalidated the zoning ordinance. Last May, the Supreme Court of Florida upheld the decision in an opinion which observed that

"the taxpayer deserves an opportunity to express his views and have them considered in the decision-making process." The news media, said the court, have made citizens aware of governmental problems by their constant reporting of community affairs.

NOTE: This holding appears to be a major extension of the Florida Sunshine Law preventing state agencies from avoiding coverage under the state Sunshine Law by delegating their function to private bodies.

64. **GEORGIA LAW BARS RAPE VICTIM NAME** (See this *PCN*, p. 53)

65. **IDAHO STATE AGENCY MUST OPEN INVESTMENT FUND INFORMATION TO PRESS**

The Idaho Endowment Fund Investment Board is a state agency which manages and invests state funds. The Board often invests in bonds or notes guaranteed by the federal government.

Early this year, the Boise *Idaho Statesman* began an investigation of the investment procedures followed by the Board. As part of this investigation, reporter Kenneth Matthews requested access to the Board's files concerning certain federally guaranteed Small Business Association loans.

Matthews made his request under the Idaho freedom of information law, which states that "the public records and other matters in the office of any officer are...open to the inspection of any citizens."

When the Board denied the request, the *Statesman* filed suit in Idaho state court.

In arguing against disclosure, the Board claimed that the data requested by Matthews were not public records because they were preliminary reports irrelevant to the Board's public function.

On September 16, Judge J. Ray Durtschi ordered the Board to open its records relating to Small Business Association loans made with state funds. The judge held that these documents were public records and were therefore within the scopeof the freedom of information law.

66. **INDIANA CORONER SEALS DEATH CERTIFICATES**

The Evansville-Vanderburgh County Health Department filed suit in August, 1973, against the *Evansville* (Ind.) *Press* seeking a declaratory judgment on the availability of death records to the public. The department had previously refused to allow *Evansville Press* reporter L.D. Seits to see the death certificates or purchase copies of them.

On July 22, 1974, a state Circuit Court Judge declared the records open to the public because of the Indiana State Anti-Secrecy Act. Under that act, all state government activities and documents are presumed to be public record information unless specifically closed by statute. The judge also said that the certificates were available based on a 1949 state statute expressly opening death records to the public.

The Department of Health has announced its intention to appeal the decision and has continued to deny the press access to the death certificates.

67. **MASS SEALS EX-OFFENDER CRIMINAL RECORDS** (See this *PCN*, p. 52)

68. **NY BILL TO PROTECT REPORTERS DIES IN COMMITTEE**

In early January, Assemblyman Joseph Margiotta (R-Uniondale) and Sen. John Dunne (R-Garden City) introduced bills in the New York State Legislature which would have provided for the prosecution of anyone who "intentionally or unreasonably obstructs or impairs the performance" of a news reporter or photographer (see *PCN IV*, p. 48).

Assembly Bill 8184 and Senate Bill 7016, which were assigned to the Codes Committees of the respective houses, died when the legislature adjourned, and it is not known if either will be re-introduced when the new session convenes in January.

69. **LONG ISLAND PAPER LOSES CITY BUSINESS AFTER CRITICIZING MAYOR**

For more than fifty years, the *Garden City* (N.Y.) *News* has been the official newspaper of that Long Island town and, as such, published all legal and public notice advertising. On July 17, the paper criticized the mayor for his handling of police contract negotiations and suggested that he resign. The next day, the village board voted to withdraw the official newspaper designation from the *News* and to award it to the *Garden City Leader*.

Criticizing the political pressure exerted by the village board, the Nassau County Press Association announced that it would investigate the incident. Before the investigation could get underway, however, Jeffrey King, owner of the *News*, sold the paper to the Litmor group based in Hicksville, N.Y. The new manager of the *News*, Robert Morgan, was also the chairman of the Nassau County Press Association.

The press group then suspended its plans for an investigation, because, according to Morgan, "we felt it might be considered to be a conflict of interest."

70. UTICA MAYOR LOSES PRESS HARASSMENT SUIT

The Gannett newspapers filed suit in federal court against Utica Mayor Edward Hanna and obtained a court order forbidding the mayor to discriminate against the reporters of two Utica newspapers (see *PCN V*, p. 67). A day later, Hanna issued a set of guidelines requiring reporters of all news media to write and sign all questions asked of city officials. The mayor also: (1) sued the *Observer-Dispatch* and *Daily Press* for $1 million in punitive damages for what Hanna termed press harrassment; and (2) requested that the Federal Court bar *Observer-Dispatch* reporter Denney Clements from City Hall. The newspapers refused to obey the guidelines and subsequently asked the court to find Hanna in contempt of the July 1 order.

In early August, the court struck down the mayor's guidelines and dismissed both the harassment suit and the request to deny Clements access to City Hall. However, the court declined to find Hanna in contempt.

71. OREGON POLICE HAVE DISCRETION TO OPEN OR CLOSE INVESTIGATION FILES

The Oregon open records act requires that the record of an arrest and the report of a crime shall be open to the public, but that criminal investigatory files shall not be disclosed "unless the public interest requires disclosure in the particular instance."

On September 4, Oregon Attorney General Lee Johnson issued an opinion that it was up to the police agencies to decide when the public interest required disclosure of investigatory files.

He also said that each request for disclosure of an investigatory file would be "judged on the individual facts, considering the nature of the crime, the interest of the public and the efficiency of the police agency and the interest of the inquirer."

Johnson stated that in a particular case, the "public interest" in freedom of the press might require the disclosure of an investigatory file to a member of the press, though not to a member of the general public.

72. ACLU CHALLENGES SECRET POLICE MEETING

Last April, a committee of the Portland, Oregon police bureau began an inquiry into an incident involving the shooting of an innocent man by a policeman. The committee met in secret executive session, and excluded an *Oregon Journal* reporter (see *PCN V*, p. 69).

The Oregon open meeting law states that newspersons "shall be allowed to attend executive sessions."

On June 3, New Oregon Publishers, Inc. filed suit challenging the exclusion, claiming that it violated the open meetings statute.

In seeking to dismiss the suit, the defendants (the mayor, police chief, and committee members) asserted that the executive session was justified because the group was reviewing criminal investigatory information and records.

In response, the publishers deny any intention of challenging the right to hold executive sessions. They argue, however, that the open meetings law permits newspeople to attend such sessions.

PENNSYLVANIA ENACTS NEW SUNSHINE LAWS; WEAKENING AMENDMENT INTRODUCED 73.

On July 19, the Pennsylvania legislature enacted a new "sunshine" law, which requires open meetings for all state and local governing bodies, including school boards, the state legislature and the governor's cabinet (see *PCN V*, p. 67). The law also requires that notice of these open meetings be published in the state's newspapers.

In late October, state Senate Majority Leader Thomas F. Lamb introduced legislation that would exempt meetings of the state General Assembly from the notice requirements. The bill is presently in committee.

SUNSHINE LAWS—A BRIEF OVERVIEW 74.

Open meetings ("Sunshine") laws are now in effect in 48 states. Only Mississippi and West Virginia have no sunshine provisions on the books. Most of the laws, however, contain limitations, such as exceptions for executive sessions and discussions of personnel problems.

The Tennessee statute (chapter no. 442, Public Acts of 1974) is considered to be the toughest sunshine law. It requires that all meetings of any governing body to be open to the public. There is no exception for executive sessions. The Tennessee law also provides that notice of all meetings must be given and that full minutes must be kept. The law gives the courts power to issue injunctions and impose any other equitable remedy to "enforce the purpose of the Act."

Chattanooga Times 75.

Recent cases arising under the Tennessee sunshine law include the following:

In August, reporters for the *Chattanooga Times* and the *Oak Ridger* invoked the Tennessee Sunshine Law when they were denied admission to meetings of two different school boards.

In early September, the newspapers filed separate suits against the school boards, asking for injunctive relief and any other penalties necessary to enforce the letter and spirit of the law. The suits are still pending.

Freedom of Information/State

WAGG

76. Ralph Dawson, news director of Franklin (Tenn.) radio station *WAGG*, sued the Williamson County School Board, alleging that the board had violated the state's new "Sunshine Law". The suit charges that the board: (1) failed to give public notice of two meetings held in July between the school board and the Williamson County Educational Association; (2) failed to keep minutes of the meetings; and (3) closed the meetings to the public. The lawsuit asks the court to void any decisions on teachers' pay raises which may have been made during the meetings.

77. HOUSTON POLICE DENY PRESS ACCESS RECORDS (See this *PCN*, p. 54)

Government Harrassment

78. FBI MAKES "OFFICIAL" VISIT TO PROTEST CATHOLIC PRIEST'S COLUMN

In a column appearing in *The Western Catholic* on June 23, Rev. Andrew Greeley criticized the FBI for its handling of the Symbionese Liberation Army/Patricia Hearst case which climaxed in a Los Angeles shoot-out. The column was also distributed to newspapers across the country by the Universal Press Syndicate.

FBI Director Clarence Kelley responded to the column with a letter which was printed by *The Western Catholic* in its August 4 issue. Nearly a month later, two FBI agents made an "official" visit to hand deliver a copy of the letter to the office of the Universal Press Syndicate. No threats were made either to Greeley or to the agency. The columnist said he feels that the visit had a "clear message" and had an intimidating effect.

NOTE: For stories of similar FBI incidents, see *PCN IV*, p. 47 and *PCN V*, p.40.

79. US SUPREME COURT POLICEMAN POSES AS NEWSMAN

When a pro-abortion group sought to hold a rally on the steps of the Supreme Court last year, it learned that the policy of the Supreme Court, which has jurisdiction over its own grounds, forbids demonstrations in or around the building. The rally was then moved across the street to the grounds of the Capitol.

During the demonstration, Supreme Court Police Lt. James Zagami dressed in plainclothes and, posing as a news reporter, attended the rally with a tape recorder.

Barrett McGurn, the Supreme Court's press officer, confirmed the incident but maintained Zagami acted without the knowledge of court officials. However, according to *New Times* reporter Nina Totenberg, who broke the story, Zagami was acting with the approval of his supervisors and was supplied with expensive camera equipment. Since the story was published, Totenberg said, Zagami has been "punished by being rotated to night duty."

WASH. STAR-NEWS CAMERAMAN ACQUITTED OF DISORDERLY CONDUCT CHARGES 80.

Washington *Star-News* photographer Geoffrey Gilbert was charged with disorderly conduct in June following a scuffle with police as he attempted to photograph a traffic arrest outside the *Star-News* building (see *PCN V*, p. 72). Gilbert claimed that he was hit in the chest with a nightstick and wrestled to the ground.

Star-News managing editor Charles Seib said that police deliberately exposed two rolls of film confiscated from Gilbert's camera and thereby destroyed pictures of the arrest and other news photos.

A D.C. Superior Court judge acquitted Gilbert of disorderly conduct charges in September after concluding that Gilbert and a police officer "inadvertently collided." In an oral opinion delivered from the bench, the judge did not draw any conclusions about the exposure of the film and cleared the police of any charges of police brutality.

LOUISVILLE REPORTERS ARRESTED FOR EAVESDROPPING ON POLICE SESSION 81.

Last May, two Louisville reporters, Howard Fineman of the *Courier-Journal* and Jerry Hicks of the *Times*, were arrested and charged with disorderly conduct because they listened outside the door of a closed session of the local Fraternal Order of Police. The newsmen spent 2½ hours in the city police lock-up before the *Courier-Journal* and *Times* Company posted bail.

The participants in the police meeting, including the police chief and legal counsel, also seized the reporters' notes and a tape recorder. The Fraternal Order of Police later asked the U.S. Attorney to convene a federal grand jury to investigate a possible violation of a federal anti-bugging statute. The machine had not been turned on during the meeting and there was nothing on the tape. The grand jury did not indict the newsmen.

In early October, Judge Benjamin Shobe ordered a Louisville police court jury to acquit Fineman and Hicks on the disorderly conduct charge. The judge ruled that the prosecution had not demonstrated that the reporters had disturbed the meeting.

82. ATLANTA POLICE DENY PRESS PASSES TO TWO ALTERNATIVE NEWSPAPERS

Atlanta police chief John Inman refused in August to issue city press identification passes to news staff members of the *Atlanta Voice* and the *Great Speckled Bird*. According to the *Voice*, Inman claimed the issuance of press passes was "privileged." *Voice* staff member Gregg Mathis, however, attributes the denial of passes to "critical investigative reports" of the Atlanta police department by both newspapers.

The *Voice* is the state's largest black newspaper. The *Bird* is one of the oldest and best known underground papers.

Despite Inman's refusal to authorize the passes, Atlanta Mayor Maynard Jackson issued both papers press identification signed by Inman and sent to the Mayor for distribution.

NOTE: See *PCN* V, p. 56 for a suit by two newsmen seeking White House accreditation. Also see *PCN* V, p. 43 regarding a police spy plant on the *Voice* staff.

83. INDIANAPOLIS REPORTERS INDICTED AFTER ALLEGING POLICE CORRUPTION AND PROSECUTORIAL MISBEHAVIOR

Since February, Richard E. Cady and Williams E. Anderson, reporters for the *Indianapolis Star*, have been investigating corruption in the Indianapolis police department and the Marion County prosecutor's office.

The investigation initially focused on police graft and protection of prostitution, narcotics, bootlegging and gambling. These allegations were based largely on information allegedly supplied by 28 confidential police department sources.

When only five policemen were indicted for illegal activities, the reporters began to look into the way County Prosecutor Noble Pearcy was presenting the cases to the three grand juries that were investigating police corruption. After interviewing 78 former grand jurors, the reporters wrote that it appeared that Pearcy had manipulated the grand jury deliberations.

According to the *Star*, Cady and Anderson were contacted in March by Larry Keen, a police informer whom the reporters considered unreliable. Keen told the reporters that at a particular time and place he was going to pay off a police officer. The reporters, "as a matter of curiosity," went to the scene and saw Keen pass an envelope to a police lieutenant.

The indictment has been widely criticized by press groups, lawyers and politicians. Robert D. Early, the managing editor of the *Indianapolis Star*, called the indictment "a carefully orchestrated frame-up," and the president of the Indianapolis Bar Association said that the indictment amounted to a "cynical disregard" of freedom of the press. Two independent press groups are launching investigations into the charges against the reporters.

Senator Birch Bayh (D- Ind.) and *The Reporters Committee for Freedom of the Press* have both sent letters to Attorney General William Saxbe, urging that the Justice Department investigate whether Cady's and Anderson's civil rights had been violated by the indictment. In its letter *The Reporters Committee* stated that the indictment was a corruption of "the state criminal justice system in an attempt to intimidate these reporters...from exercising their ...civil rights to investigate and write about governmental affairs."

As yet, there has been no response to these letters by the Justice Department.

Because of this incident a Marion County grand jury on September 12 handed down an indictment charging Cady and Anderson with conspiracy to bribe a police officer. Neither the informer nor the police officer were indicted.

84. WHITESBURG MOUNTAIN EAGLE BURNED DOWN; POLICEMAN ARRESTED; ARSON SUSPECTED

On August 1, the *Whitesburg* (Ky.) *Mountain Eagle* burned to the ground. Tom Gish, editor of the *Eagle*, was unsuccessful at the time in convincing state police to investigate the cause of the fire despite an additional request made by the Whitesburg Fire Chief. The paper has developed a national reputation for its investigations of strip mining and mine safety hazards which has made it unpopular with local mine owners and officials.

Two weeks later, a cleanup crew discovered kerosene-soaked envelopes inside Gish's office. The *Reporters Committee*, by counsel, asked the Justice Department to start an investigation. The state then started its own ten-week investigation which appeared to center on Gish and his immediate family. At one point investigators asked them to take lie detector tests.

The tests became unnecessary when investigators handed down warrants October 18 charging a Whitesburg policeman and three others with the *Eagle* arson.

Eagle Still Screams

The fire caused $30,000 in damage by completely destroying the newspaper office and its equipment. The *Eagle* has continued to meet its weekly deadline and serve its 5,700 readers as usual. Gish, typing copy at home and using improvised equipment to put the paper out while awaiting delivery of new production machinery, has continued to publish his critical assaults on the Kentucky strip mining interests, coal operators, truckers, police and local government officials.

The effects of the fire have caused at least one important change in the newspaper. The two-word slogan formerly appearing on the *Eagle's* masthead proclaiming that "IT SCREAMS" has been changed to read: "IT STILL SCREAMS."

(See this *PCN*, p. 20 for a story about a $100 document fee assessed to the *Eagle* by the T.V.A.)

III CONFIDENTIALITY OF NEWS MEDIA SOURCES

State Executive

1. CALIF. POLICE USE NO-NOTICE WARRANTS TO SEARCH MEDIA FILES AND TO AVOID SHIELD LAW PROTECTION

In 1972, in a case involving the *Stanford* (University) *Daily*, a federal judge in California ruled that no-notice police search-warrant raids of news offices violated the First and Fourth Amendments (see *PCN II*, p. 14 and *PCN V*, p. 33). He said that police should pursue the less drastic alternative of the subpoena process because it would give the news organization notice and an opportunity to raise First Amendment objections in court before producing the material and would preclude the danger of police sifting at will through confidential news files.

In addition, California has a strong law barring subpoenas for confidential news sources—a law which is completely useless if police decide to use search warrants to obtain what they can't get by subpoena.

Despite the clear holding of the *Stanford Daily* decision and the state shield law, police in California continue to conduct no-notice searches of news offices. There have been at least four such searches in the past year of the *Los Angeles Star*, the *Berkeley Barb* (two warrants served on the *Barb's* attorneys) and of radio stations *KPFA-FM* in Berkeley (see *PCN IV*, p. 25), *KPFK-FM* in Los Angeles and *KPOO-FM* in San Francisco.

The searches of the radio stations were all directed against stations with strong informational links to the radical community and with known policies of protecting confidential news sources. Two of the searches —of *KPFK* and the *L.A. Star*—were prolonged, massive searches of news offices where police also seized documents apparently unrelated to their investigations.

2. LOS ANGELES POLICE CONDUCT NO-NOTICE SEARCH OF RADIO STATION FOR 8 HOURS AND SEIZE FILES

In October, Los Angeles Pacifica station *KPFK-FM* received a communique from the "New World Liberation Front" relating to a recent bombing of the Sheraton Airport Hotel in Los Angeles. *KPFK* broadcasted portions of the communique as a news item and released the full text to other news organizations.

Los Angeles police officials demanded the station turn over the original of the communique. Station officials gave the police a copy of its contents but refused to turn over the original, citing the First Amendment and the California shield law.

On October 10, representatives of the Los Angeles Police Department arrived at *KPFK*'s studios with a no-notice search warrant and, for over eight hours, conducted a complete search of all the station's files and facilities. Although the police did not find the original communique, they rifled the files and seized documents belonging to the station.

The *Los Angeles Times*, the Los Angeles Press Club and Sigma Delta Chi have joined *KPFK* in condemning the search. The station is planning to file suit against the police.

3. CALIF. STATION HIT WITH SEARCH WARRANT GIVES UP RADICAL COMMUNIQUE TO POLICE

San Francisco radio station *KPOO* is a self-styled "Third World inner city community station" that is almost entirely listener-supported and volunteer-operated. Along with several other alternative radio stations and newspapers in California, *KPOO* has received communiques from the "New World Liberation Front," claiming credit for a series of West Coast bombings of ITT facilities.

On October 16, *KPOO* received a photocopied letter from the extremist group announcing the bombing of the ITT-owned Sheraton Palace Hotel in San Francisco and demanding the release of Chilean political prisoners. The only person at the station, who was broadcasting a music show, called the police and told them about the letter.

Seven San Francisco policemen and one F.B.I. agent arrived at the station and asked for the letter. Other station officials who had been contacted in the interim refused to relinquish it without a court order.

Station Clarifies Policy

The police then obtained a search warrant and returned to the station where they were given the letter.

The next day, the New World Liberation Front contacted *KPOO* and demanded that station officials go on the air that day to explain station policy with regard to cooperating with law enforcement authorities.

KPOO staff people then met and announced that all material sent to the station would be considered as "public domain" for broadcast purposes and would be distributed to other news media. They said that the station would not act as a "police information agency" and would respond to law enforcement requests only if there was a court order in which a *KPOO* attorney had participated.

Two weeks later, *KPOO* received another communique from the New World Liberation Front which "instructed" the station not to divulge any information to the police and not to give copies of communiques to the press.

4. **L.A. POLICE MAKE NO-NOTICE RAID USING CRIMINAL LIBEL LAW: FILES SEIZED**

On October 15, the *L.A. Star*, a weekly Southern California tabloid, published a composite photograph superimposing a picture of actress Angie Dickinson's face on the shoulders of an unidentified nude female body in a sexually explicit pose.

Two days later on October 17, Dickinson signed a crime report but said she would not go to court to prosecute. The Los Angeles city attorney's office then filed a criminal libel complaint against Paul Eberle, his wife Shirley and Mickey Leblovic, publishers of the *Star*.

The California criminal libel law provides for fines of up to $5,000 or up to one year imprisonment in the county jails for actions of "malicious defamation tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation of one who is alive and thereby expose him to public hatred or ridicule." Under the law, truth may be asserted as an affirmative defense.

That same day, police using search warrants, seized the printing plates and layout sheets used to publish the October 15 paper from a printing facility in nearby Riverside, California.

Later that night, police also seized 12 manila folders containing artwork, photographs, editorial copy and address books from the *Star* editorial offices pursuant to a search warrant but without a prior judicial adversary hearing.

The following day, publisher Eberle was arrested and charged with a misdemeanor for violation of the California criminal libel statute.

In response to these actions, *Star* attorneys have filed a $1 million damage complaint in federal court against the Los Angeles police department charging them with unlawfully exercising a prior restraint against publication in derogation of the First Amendment and seizing news material without a prior adversary hearing.

The suit seeks declaratory and injunctive relief against further prosecution under the California criminal libel statute, challenges its constitutionality and requests the return of materials taken by police during their search.

5. **BERKELEY BARB HIT WITH SEARCH WARRANTS FOR RADICAL DOCUMENTS**

The *Berkeley Barb* has been subject to two search warrants in the past year for documents sent to the paper by radical sources: one warrant from Alameda County police in February for a letter from the Symbionese Librarion Army on the Patricia Hearst kidnapping and the other in June from the F.B.I. for a letter from the Black Liberation Army.

Because the *Barb* staff had given the documents to their attorneys, both warrants were served on the attorneys who then turned over the letters.

After the *Barb* received and printed several communiques from the New World Liberation Front in October, staff members notified law-enforcement officials that they would no longer automatically release documents in response to police warrants or subpoenas. The *Barb* staff is currently devising a policy for handling confidential material sent to the paper.

6. **FEDERAL COURT BARS NO-NOTICE POLICE SEIZURE OF MAGAZINES**

In July, 1973, representatives from the Tulsa, Oklahoma, district attorney's office, accompanied by a Tulsa County judge, confiscated over 100 boxes of allegedly pornographic materials belonging to the Sooner State News Agency, a magazine wholesaler. The Agency was given no advance notice of the search and filed suit later that month seeking the return of their materials.

A three judge federal panel concluded in December, 1973 that the confiscated newspapers, films and books were "presumptively within the protection of the First Amendment. A mass seizure of such material," the panel said, "without a prior adversary hearing and a determination therein that the material is obscene, constitutes a prior restraint on the circulation of presumptively protected material and as such violates the federal Constitution."

The judges ordered the return of the confiscated materials but allowed the D.A.'s office to retain a single copy of each item seized to be used in evidence in criminal prosecutions for violations of the obscenity statutes.

State Legislative

7. **OKLAHOMA PASSES WEAK SHIELD LAW; PERMITS SUBPOENAS FOR "RELEVANT" INFORMATION**

The Oklahoma Legislature has passed, and Gov. David Hall has signed, a limited newsman's privilege law. The new statute provides that no newsman will be required to reveal any of his sources or turn over unpublished information unless a court determines that the information sought "is relevant to a significant issue in the action and cannot be obtained by alternate means." The law also does not apply to defamation actions in which reporters base their defense upon confidential sources or unpublished information.

The law appears to be one of the weakest in force, mainly because, under the rules of evidence, virtually any information is considered "relevant." The statute is similar to the Justice Department Guidelines ("There should be sufficient reason to believe that the

information sought is essential to a successful investigation...The Government should have unsuccessfully attempted to obtained the information from alternative non-press sources"), and the looseness of those Guidelines may have resulted in their abuse (see Tom Blackburn story, this *PCN*, p. 39 and Will Lewis story, this *PCN*, p. 38).

Oklahoma is the twenty-sixth state to have enacted some form of reporters' shield. The other 25 are: Alabama, Alaska, Arkansas, California, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Tennessee. *The Reporters Committee* will supply texts of these statutes upon request.

8. HAWAII COUNTY PASSES FIRST LOCAL SHIELD LAW IN NATION

On November 5, voters in the County of Hawaii approved a county charter amendment which provides that "no legislative or administrative body, or any other County body having the power to issue subpoenas" shall be able to force a reporter to disclose "the source of any information procured...for publication." The amendment, which took effect immediately and cannot be repealed except by a future referendum, passed on a 12,886-9,655 vote.

As far as *The Reporters Committee* is aware, the County of Hawaii is the first political subdivision below the state level to grant legal protection for reporters. It is also the first time that the question has been placed before the voting public on a general election ballot.

The state of Hawaii does not have a shield law.

9. WISCONSIN BILL TO PROTECT MEDIA TELEPHONE RECORDS DIES

Wisconsin State Rep. Edward Nager (D-Madison) sponsored legislation which would have prohibited telephone companies from disclosing private telephone and telegraph records in matters not related to the purposes of billing (see *PCN IV*, p. 25). Introduced in February, Assembly Bill 1640 was approved by the Assembly Judiciary Committee by an 8-3 margin on March 29, but died when the legislature adjourned in June.

10. CALIFORNIA PASSES ABSOLUTE SHIELD LAW; PROTECTS BOTH SOURCES AND CONTENT OF UNPUBLISHED INFORMATION

California's current shield law (Section 1070 of the California Evidence Code) provides that a reporter cannot be held in contempt by any judicial, administrative or legislative body for refusing to disclose "the source of...published" information. The law, however, does not appear to protect newsmen who refuse to reveal the source of unpublished information.

On March 13, state Sen. Alfred J. Song (D-Monterey Park) and 11 co-sponsors introduced S.B. 1858 to extend existing protection to cover the source and content of all unpublished materials, including newsmen's notes, film, and tape recordings. The bill passed in the final weeks of the legislative session and signed by Gov. Ronald Reagan in late September. The new law will take effect in January 1975.

11. CALIF GIVES SHIELD LAW RIGHTS TO MAGAZINE REPORTERS

A second amendment to California Evidence Code Section 1070 was A.B. 3148, which extends reporters' privilege to persons "connected with or employed upon a...magazine or other periodical publication." The bill, introduced by State Assemblyman Alan Sieroty (D-Beverly Hills), was approved both by the Assembly (64-0) and Senate (21-13) and was signed by Gov. Ronald Reagan in late September. This was done because the existing law, even with the Song amendment, did not protect writers for periodical publications.

The California law now reads:

"A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed, cannot be adjudged in contempt by a judicial, legislative, administrative body, or any other body having the power to issue subpoenas, for refusing to disclose the source of any information procured while so connected or employed for publication in a newspaper, magazine or other periodical publication, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

"Unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated."

Confidentiality

State Subpoenas & Contempts

12. LUCY WARE MORGAN CASE PENDING

Two criminal contempt of court citations carrying prison sentences of 8 months are still pending against *St. Petersburg Times* reporter Lucy Ware Morgan for refusing to identify a confidential news source in a grand jury probe (see *PCN IV*, p.16 & *PCN III*, p.9).

13. MIAMI HERALD REPORTER SUBPOENED FOR INTERVIEW WITH RAPE VICTIM

The Miami Herald published an interview on December 23, 1973 describing the experiences of an alleged rape victim, "Lisa," as told to Bea Hines, a *Herald* reporter.

The state charged Austin I. Stoney in connection with the alleged rape. Lawyers for Stoney then sought to subpoena Hines to require her to testify at the trial and to produce "all notes, memoranda, news articles and all other writings" concerning "Lisa," whom they said would be the principal prosecution witness.

The defense lawyers said they were planning to show at trial alleged inconsistencies between various statements made by the alleged rape victim. For that purpose, they said they would first call another witness, who had been present at Hines' interview with "Lisa." But they said Hines' testimony would be needed if the first witness' testimony was impeached on cross-examination.

On August 13, a Florida state court judge granted Hines' motion to quash the subpoena.

The judge relied primarily on First Amendment grounds. He said there had been no showing of a compelling need for the reporter's testimony and notes, and no indication that the information sought was not available from other sources.

Therefore he ruled that the First Amendment prevailed, protecting a reporter's right in a criminal case not to reveal sources and unpublished information unless evidence is "so important" that its non-production would violate the defendant's constitutional rights.

14. FLORIDA REPORTER SUBPOENAED OVER FAULTY BUILDING REPORT

The October 29, 1974 issue of *The* (Jacksonville, Fla.) *Times-Union* carried a story by reporter Randolph Pendleton about a downtown Jacksonville building which was then the subject of a civil lawsuit. Pendleton quoted named federal government housing officials as saying a portion of the building had been condemned because of cracks and other structural damage. The building's owner, claiming the damage had been caused by the recent erection of an adjacent building, was suing the contractors responsible for its construction.

A defense attorney in the civil action served Pendleton with a subpoena directing him to testify by deposition about his October 29 article and to produce all of his notes relating to the article.

The subpoena did not indicate the scope of the planned questioning, and the reporter's story had not referred to any unnamed confidential sources. There were indications, however, that the defendants in the lawsuit wanted to learn who put Pendleton on to the story about the government condemnation proceeding.

One hour before the scheduled deposition of November 1, a Florida state court judge granted Pendleton's motion to quash the subpoena.

Describing the subpoena as an apparent attempt "to inquire into the gathering of news and the sources thereof," a judge ruled that no showing had been made to justify "what would appear on its face to be a violation of the First Amendment freedoms of the news media."

The judge said that even in criminal cases, a compelling need for the information sought from a reporter must be shown under the Supreme Court's *Caldwell* decision, and he noted that this was a civil case.

15. NEW YORK TIMES REPORTER SUBPOENAED FOR POLICE HOMICIDE STORY

On April 28, 1973, a 10-year-old Queens, N.Y., boy was shot to death by Police Office Thomas J. Shea, after the boy and his stepfather had allegedly fled when Shea and his partner sought to question them about the nearby holdup of a cab driver. The shooting was followed by scattered violence in the neighborhood, and formal protests by community and civil rights leaders.

Two days after the shooting, *New York Times* reporter Ronald Smothers published an interview with the boy's stepfather, Add Armstead, who gave his account of the incident.

Officer Shea was charged with murder in the boy's death. Armstead was the chief prosecution witness at Shea's four-week trial in May and June of 1974.

Toward the end of the murder trial, defense attorneys subpoenaed Smothers to testify. They claimed that the reporter's testimony was needed to bring out alleged discrepancies between Armstead's published account of his stepson's shooting more than a year earlier, and his testimony at trial.

Sources Not Sought

One of the defense lawyers argued he was "not asking for his notes or sources but only if what he wrote was said to him by Mr. Armstead."

A *Times* lawyer moved to quash the subpoena on First Amendment and on technical grounds. He also argued that Smothers' testimony would damage his usefulness as a reporter, since it could harm his established ties with the community as a newsman who had specialized in civil rights and community issues

The judge quashed the subpoena, announcing that the reporter's testimony did not meet the technical requirements for "proper evidence."

Officer Shea was acquitted of the murder charge but was later dismissed from the force after a departmental verdict that the boy's shooting was "wrongful and without just cause."

16. **WILLIAM FARR REFUSES AGAIN TO DISCLOSE HIS SOURCES; NEW SUBPOENA EXPECTED; CONTEMPT STILL PENDING**

In 1971, reporter William T. Farr was found in contempt for refusing to identify two attorneys who gave him information for a story he wrote during the 1970 Charles Manson murder trial. Farr spent 46 days in jail before he was freed in January 1973, pending federal appeal.

A California appeals court last January ruled that Farr could avoid further imprisonment if there was a "substantial likelihood" that he would never reveal his sources.

After holding a hearing on the issue, Superior Court Judge William H. Levit ruled on June 20 that "there is no substantial likelihood that further incarceration" would force Farr to reveal his sources. The judge limited future incarceration of Farr to a maximum of 5 days or $500 fine or both for each count of contempt.

In June, Farr refused to answer certain questions asked by the Los Angeles County grand jury during its investigation into possible perjury charges against a prosecutor and a lawyer who allegedly gave Farr his information.

Farr was initially held in contempt by Superior Court Judge Raymond Choate for refusing to answer the questions, but the judge later reversed his ruling.

In late September, Farr was called to testify in the case of Vincent Bugliosi, the prosecutor who was indicted for perjury by the L.A. grand jury.

On October 2, Superior Court Judge Earl C. Broady ruled that Farr could not be held in contempt for refusing to answer questions about his sources. The judge cited Section 1070 of the California Rules of Evidence, which protects a reporter against contempt for refusing to divulge the sources of confidential information received for publication.

On October 3, the charges against Bugliosi were dropped. On November 18, however, the perjury trial of Dave Shinn, a defense attorney in the Manson trial, is set to begin. It is likely that Farr will again be subpoenaed.

Still pending in the U.S. Court of Appeals for the Ninth Circuit is Farr's federal appeal of the 1971 contempt citation.

17. **INDIANAPOLIS REPORTERS INDICTED AFTER ALLEGING POLICE CORRUPTION AND PROSECUTORIAL MISBEHAVIOR** (See this *PCN*, p. 28)

18. **MASS. COURT SAYS SELF-INCRIMINATION CAN BE USED TO PROTECT NEWS SOURCES**

Earlier this year, *Lowell* (Mass.) *Sun* city editor Kendall Wallace and investigative reporter Frank Phillips wrote several articles exposing an alleged extortion scheme involving four town officials. District Attorney John Droney said that the reporters could have obtained the information from a grand jury leak and that they were consequently open to charges of obstruction of justice and criminal contempt. In response to a petition from Droney who sought to question the newsmen regarding their source, Wallace and Phillips pleaded the First and Fifth Amendments.

Judge Joseph Ford rejected the First Amendment argument but upheld the journalists' claim that they need not divulge their source if it would tend to incriminate them under the 5th Amendment.

Droney did not appeal the ruling.

As far as The Reporters Committee is aware, this is the first time newsmen have pleaded the Fifth Amendment in response to an order to disclose sources.

The problem with using the Fifth Amendment is that the judge could grant immunity from prosecution. In that event, if the reporters still refused to divulge the identity of their source, the judge could have found them in contempt of court. However, prosecutors did not ask the judge to grant immunity and, when asked why, declined to explain their action.

19. **BOB WOODWARD $281,000 LIBEL JUDGMENT STILL PENDING ON CONFIDENTIAL SOURCE ISSUE**

In November 1973, a Maryland school principal won a $281,000 libel judgement against the *Montgomery County Sentinel* after a 1971 article by former *Sentinel* reporters Bob Woodward and William Bancroft called him "unsuited" for the job (see *PCN IV*, p. 7).

The reporters refused to identify their sources. The judge ruled that the defendants were not covered by the Maryland shield law, a decision the reporters are appealing. Attorneys expect to file briefs in the case late this year.

20. TWO DAYTON REPORTERS SUBPOENAED FOR SOURCES IN STATE CORRUPTION PROBE

In August, Dayton (Ohio) *Journal Herald* investigative reporters Andrew Alexander and Keith McKnight wrote a series of articles documenting alleged corruption in the Bureau of Vocational Rehabilitation, a state agency funded 20% by the state and 80% by the federal government.

In September, representatives from the state prosecutor's office contacted the reporters about the stories and asked who their sources were. Alexander and McKnight refused to disclose their sources and the Mahoning County grand jury in Youngstown issued a subpoena Sept. 25 to Alexander.

The subpoena required Alexander to appear before the grand jury Oct. 7 with his notes and testify regarding the source of his stories. Alexander refused to appear and the subpoena was subsequently quashed due to a technical defect.

It was later reissued to Alexander, again requiring him to testify before the grand jury with his notes. Subsequently prosecutors learned that Alexander had turned his notes over to *Journal Herald* publisher Charles Alexander (no relation to Andrew).

The grand jury then issued a subpoena to publisher Alexander requiring him also to appear before it with the notes along with reporter Alexander. Their appearance before the grand jury has been set for early December.

21. FLORIDA JUDGE QUASHES SUBPOENA SEEKING WIRETAP INFORMATION FROM NEWSMAN

Defense attorneys for a convicted marijuana smuggler, Ron W. Laughlin, subpoened Marathon, Fla. weekly *Keynoter* reporter Ronald Edward Mason in an attempt to get information from him about alleged illegal wiretapping of Laughlin by federal or county law enforcement agents. Defense attorneys hoped to use the information to get a new trial.

In July, a Florida Circuit judge cited the First Amendment in quashing the subpoena. The judge said that the defense had failed to show that Mason had information bearing on the case and concluded that "to require Mason to disclose his source would amount to nothing more than forcing the press to disclose its method of seeking out the news and its sources of information, clearly an infringement upon First Amendment freedoms."

Federal Legislative

FEDERAL SHIELD LAWS DIE IN CONGRESS 22.

Hopes for passage of a newsman's shield law by the 93rd Congress have died. A spokesman for the Senate Subcommittee on Constitutional Rights said that Sen. Sam Ervin (D-N.C.) tried to move his qualified protection bill (S. 1128) through subcommitte, but resistance from senators favoring absolute protection and from those opposing any protection thwarted the attempt. Legislation granting absolute protection (S.158) which was introduced by Sen. Alan Cranston (S-Calif) is also stalled in subcommittee.

On the House side, a qualified shield bill (H.R. 5928) sponsored by Rep. Robert Kastenmeier (D-Wisc.) passed the Judiciary Subcommittee on Courts, Civil Liberties and Administration of Justice. No action has been scheduled by the full committee, though, and the bill will die when Congress adjourns in December. (For stories on the bills' provisions, see *PCN IV*, p. 27 and *PCN III*, p. 15.)

THREAT TO SOURCE PROTECTION IN FEDERAL RULES OF EVIDENCE REINSTATED BY SENATE 23.

The Senate Judiciary Committee voted unanimously October 11 to approve the proposed Federal Rules of Evidence (H.R. 5463). Floor action by the Senate is expected early in the new Congress.

As originally proposed by the Supreme Court, the rules would have eliminated the application in federal courts of any privilege for confidential sources. This provision was deleted by the House (see *PCN II*, p. 3 and *PCN IV*, p. 28).

The Senate version re-instates the provision which prohibits reporters from citing state shield laws as a defense before federal grand juries seeking confidential information.

CONSUMER PROTECTION AGENCY BILL WITH MEDIA DISCLOSURE PROVISION, DIES IN SENATE 24.

Legislation establishing a Consumer Protection Agency died on the Senate floor in late September when a two-month filibuster against the bill survived an unprecedented fourth attempt at cloture. Opposition to the bill came primarily from the business community.

The measure, S. 707, contained a provision which, according to Sen. James Allen (D-Ala.), would have permitted the CPA to force newsmen to disclose confidential information obtained during a product-safety investigation (see *PCN V*, p. 38).

The bill's principal sponsor, Sen. Abraham Ribicoff (D-Conn.), said he plans to re-introduce the legislation when the new Congress convenes next January.

25. SENATE BILL TO PROTECT MEDIA TELEPHONE RECORDS STALLED

In 1973, the American Telephone & Telegraph Company admitted their longstanding policy of secretly providing law enforcement agencies with copies of media telephone records (see *PCN IV*, p.24). Among the critics of this policy was Sen. Gaylord Nelson (D-Wisc.) who introduced S. 3920 requiring the telephone company to notify any party whose records are sought and to delay compliance with requests for telephone records for ten days or, if court action is initiated, until ordered by the court (see *PCN IV*, p.25).

The Senate Judiciary Committee, which requested but has not received the Attorney General's opinion on the Nelson bill, has not placed the legislation on its calendar and will probably not act upon it this session. Sen. Nelson's office expects that the Attorney General report will be filed early next session and that the new Congress will act soon thereafter upon a bill similar to S.3920.

26. HOUSE BILL TO PROTECT MEDIA TEL RECORDS

Rep. Edward I. Koch (D-N.Y.), introduced a bill (H.R. 14981) May 22 which would prohibit the surrender of newspersons' telephone and telegraph records except in response to a court order.

Under the proposed "Newsmen's Right to Privacy Act," such an order could be issued only after a court hearing in which the newsperson involved would have a right to participate. A court would be authorized to order disclosure only if it made one of two findings: (1) that the disclosure "will not reveal or threaten to reveal" a news source or (2) that disclosure will serve "a compelling and overriding national interest" (See *PCN V*, p.37).

The bill remains pending before the House Interstate and Foreign Commerce Committee, but Koch aides are hopeful that expected House action on a broad-based privacy bill (see this *PCN*, p. 51) will set a precedent in favor of the privacy concept that will result in action on the news media privacy bill in the 94th Congress.

27. CONGRESSMAN FACES POSSIBLE CENSURE BECAUSE OF NEWSPAPER ARTICLE

Last April 22, William Colby, Director of the Central Intelligence Agency, revealed to a closed meeting of a House Armed Services intelligence subcommittee that the CIA funneled $8 million to antagonists of Pres. Salvador Allende in Chile. Rep. Michael Harrington (D-Mass.), who has been openly critical of the CIA's intervention in foreign affairs, was allowed to review the transcript of the Colby testimony in June. When *The New York Times* published a story which contained information from the transcript on September 8, the House Armed Services intelligence subcommittee accused the Congressman of leaking the secret material. Harrington, facing possible disciplinary charges, was questioned for two hours by subcommittee members on September 25.

The New York Times has stated it received the information from "outside sources."

CIA Director Colby is a leading advocate of legislation to combat leaks of government information. He has proposed legislation which would authorize the federal courts to enjoin publication of any news article containing information which the director of the CIA, in his absolute discretion, deems as classified. The Colby proposal also establishes criminal penalties for government employees who disclose unauthorized information (See this *PCN*, p. 12 and *PCN V*, p. 59).

Federal Executive

28. FED. ENERGY AGENCY OFFICIALS TO REPORT ALL CONTACTS WITH THE PRESS

The Federal Energy Administration issued new regulations September 25 requiring employees in the supergrades GS-15 and above to log all communications with parties not involved with agency proceedings.

According to a letter published in the Federal Register September 25 from FEA General Counsel Robert Montgomery explaining the new regulations, the provision was "designed to maintain the integrity of FEA's decision making process." Routine requests for public record information would be exempted from the logging requirements.

Media sources feel that the new regulations have the potential to impeach reporters' confidential sources by requiring government officials to log the names of persons they speak with, the organizations they represent and a brief summary of the subject matter discussed.

In addition to the written log provisions, the new guidelines also stipulate that written records of meetings between the Administrator, the Deputy Administrators or the General Counsel and persons outside the agency for the preceeding two weeks will be made available to the public.

This was done, according to Montgomery, to "insure that FEA's programs and policies are developed and implemented in an open atmosphere and to promote public confidence in the agency."

29. FED. GOV. CONTINUES FIGHT AGAINST NEWS LEAKS

• The FBI has been conducting an internal inquiry to discover the sources of leaks to newsmen of confidential information from its Watergate files. The investigation was ordered by FBI director Clarence Kelley, although progress reports to Kelley are submitted to Attorney General William Saxbe and the special Watergate prosecutor as well. Of particular interest to the agency are the sources of leaks about convicted campaign saboteur Donald Segretti and about wiretapping of newsmen by the Nixon Adminstration.

• In an effort to plug news leaks at the State Department, Secretary of State Henry Kissinger set up "reading rooms" where staff members must sign in before they are allowed to read secret diplomatic cables.

• The Defense Department has also moved to stop unauthorized news leaks by suspending publication of secret daily reports of the Defense Intelligence Agency.

30. FEDERAL PROBE GETS NEWSMAN'S TEL CALLS

Labor Department investigators looking into the use of Teamster's Union phones for personal use administratively subpoenaed phone records of several union officials. One of the phone numbers appearing in the record was that of Ron Hendron, Washington correspondent for the *College Press Service*.

When Labor Department investigators subsequently tried to question Hendron about his conversation with labor officials, Hendron refused to cooperate. The department has not taken any further action to date.

NOTE: Although this represents a different twist on the disclosure of reporters' sources by releasing newsmen's phone logs to government investigators, it points up the possibility of compromising news sources by subpoenaing phone records of those thought to be press contacts. (For AT&T practice of giving news media phone records to the government, see *PCN IV*, pp. 24-25).

Federal Judicial

31. JACK TAYLOR REFUSES TO ANSWER FEDERAL GRAND JURY QUESTIONS

Daily Oklahoman reporter Jack Taylor was subpoenaed September 9 by a federal grand jury in Oklahoma City probing the affairs of Oklahoma governor David Hall. The subpoena was issued at the request of the jury foreman who briefly questioned Taylor September 10 about the source of secret grand jury information contained in Taylor's stories about the Hall investigation.

Taylor refused to answer three questions concerning the source of his information, each time answering, "I respectfully decline to answer on the grounds of the First Amendment to the Constitution of the United States." The 17 member jury then dismissed Taylor and declined to take any other action on the matter.

Federal Judicial

32. TEXAS MEDICAL ASSOCIATION LOSES MOTION TO GET CONFIDENTIAL SOURCES

This year, Jackie (J.L.) Cox, a Texas free-lance reporter has been writing a series of articles critical of the Texas Medical Association, some of which appeared in the *Texas Observer*. The articles concerned the internal workings of the Association and often quoted anonymous members of the group regarding harrassment of physicians who disagree with the Association's political philosophy. Cox also testified about these matters before Senate and H.E.W. committees.

Meanwhile, the Association filed suit in U.S. District Court in Texas challenging certain H.E.W. regulations which require the establishment of an organization to review the professional standards of the medical profession in Texas.

In July, the Association subpoenaed documents, financial records and information concerning confidential sources belonging to Cox. The Association claimed that Cox had information concerning the method by which the H.E.W. regulations were promulgated.

Later in July, Cox moved to quash the subpoena, claiming it was "burdensome and oppressive in its breadth and scope" and that it "seeks to inquire into matters that are privileged" under the First Amendment.

Since then, an agreement between the parties and the court has been worked out in an off the record session. The court stated that Cox could not be required to testify about her secret sources or her actual work product. The Court said, however, that she could be required to testify about matters which she discussed before the Senate and H.E.W. committees.

With this agreement in effect, Cox's deposition was taken, and the motion to quash was declared moot.

33. HUME-ANDERSON LIBEL SUIT CONTINUES

The Washington Merry-Go-Round column published in *The Washington Post* on December 14, 1970 reported that Edward L. Carey, former United Mine Workers counsel, had removed files from a UMW office. Carey filed a libel suit against columnists Jack Anderson and Brit Hume and *The Washington Post*.

Litigation over whether Hume could be required to disclose the identity of his source in a pre-trial deposition was carried to the Supreme Court, which on May 28, 1974 refused to stay lower court orders commanding disclosure. The source then released Hume from his pledge of confidentiality and was named by the columnist (see *PCN* V, p. 33).

The underlying libel case is continuing. Motions for summary judgment have been filed by the *Post* and will soon be filed by Hume and Anderson.

34. US DISTRICT COURT QUASHES SUBPOENAS FOR CONFIDENTIAL INFORMATION FROM NBC AND ABC NEWS EDITORS IN CBS LIBEL CASE

In June 1973, Henry Buchanan, brother of former White House aide Patrick Buchanan, filed a $12 million libel suit against *CBS*, Walter Cronkite and *CBS* affiliate *WTOP-TV* in Washington, D.C. (see *PCN IV*, p. 6 & *PCN V*, p. 7).

The suit contended that a May 8, 1973 *CBS Evening News* broadcast, which said Buchanan's accounting firm had been used to "launder" campaign contributions to the Nixon presidential campaign, was false and malicious. *CBS* retracted its story three days after it was originally broadcast. *ABC* and *NBC* did not air broadcasts containing the charges. *CBS* reportedly based its story on an *AP* dispatch. *AP* was also sued as was *AP* reporter Stephen Cohen.

In May 1974, attorneys for Buchanan subpoenaed *ABC Evening News* producer, William Lord and *NBC Nightly News* associate producer, Herbert Dudnick. The subpoena sought "testimony, records, memorandums and documents" related to their handling of the Buchanan story.

In September, U.S. District Court Judge Thomas Flannery quashed the subpoenas against Dudnick and Lord saying that "the information sought" by the plaintiffs did not go to "the heart of their case." In addition, Flannery said Buchanan had failed to show that the information sought was not available from other sources.

The underlying libel cause against *CBS* is still pending although no court date has been set.

35. SIRICA SUGGESTS PRESS SUBPOENAS (See this *PCN*, p. 43)

36. JAILED EDITOR SAYS FEDERAL SUBPOENAS ENDANGER 25 STATE SHIELD LAWS IN SUPREME COURT APPEAL

Will Lewis, station manager of Los Angeles Pacifica station *KPFK-FM*, was held in contempt and jailed last summer for his refusal to turn over to a federal grand jury the originals of a letter and a tape recording sent to the station by radical groups (see *PCN V*, p. 31).

After spending 16 days in solitary confinement at Terminal Island Federal Prison, Lewis was released by Supreme Court Justice William O. Douglas pending his appeal. In July, the Ninth Circuit Court of Appeals affirmed the contempt. Lewis appealed to the Supreme Court.

Lewis' brief points out that many federal courts follow the testimonial privilege law of the state in which they are located and that California has a very strong shield law.

If federal courts are allowed to ignore state privilege laws, the brief argues, "the effect of such a ruling will be effectively to nullify the efforts of the legislatures of at least twenty-five states to foster the vigor and freedom of news reporting within their respective borders by protecting the confidentiality of news sources."

Unique Pacifica Role Cited

The brief notes that most serious crime is subject to investigation by both state and federal grand juries so that "to allow a federal court to override a state privilege in such circumstances thus would enable a state grand jury to obtain through cooperation with federal authorities precisely what the state legislature has intentionally denied it."

Lewis is also maintaining that the lower courts failed to follow the test set forth in Justice Powell's pivotal concurring opinion in *Branzburg v. Hayes* which requires courts to balance law enforcement need against freedom of the press claims before deciding a question of newsperson's privilege.

The brief points out that Pacifica stations have a unique trust relationship with radical groups which has produced stories of great interest to the general public; and that if this relationship is interfered with, the public will lose the informational benefits of the Pacifica stations' confidential sources.

37. WILL LEWIS JAILED AGAIN FOR PROTECTING RADICAL SOURCES AND IS RELEASED BY JUSTICE DOUGLAS

The day following the unsuccessful search of *KPFK-FM* studios by the Los Angeles Police Department (see this *PCN*, p. 30), FBI agents delivered a subpoena to station manager Will Lewis, ordering him to appear before a federal grand jury with the original copy of the New World Liberation Front communique.

Lewis appeared before the grand jury but refused to answer any questions and refused to produce the communique.

At his subsequent contempt hearing before U.S. District Court Judge A. Andrew Hauk (the same judge who ordered Lewis' jailing last July), Lewis argued that the subpoena was defective because it was issued in violation of the Justice Department Guidelines on issuance of subpoenas to members of the news media.

The Guidelines, which have been promulgated as official government regulations, stated that "negotiations with the media shall be pursued in all cases" before the Attorney General's authorization for a subpoena can be requested. Lewis said he had no communications whatever with federal officials until the service of the subpoena.

Lewis also argued the same issues he raised in the appeal of his July subpoena—that the California newsperson's privilege statute should be applied in federal grand jury proceedings and that Justice Powell's opinion in *Branzburg* required a First Amendment "balancing test."

On October 31, Judge Hauk found Lewis in contempt, ordered him handcuffed publicly in court and ordered him jailed immediately. Judge Hauk said there was no confidential relationship between Lewis and the source of the communique and that "there exists no burden on the Government to show that they have adhered to their interdepartmental policy statements." He also rejected the argument on applicability of the state shield law as "patently frivolous and misleading."

After spending two days in jail, Lewis was ordered released by Justice William O. Douglas pending an appeal to the Ninth Circuit Court of Appeals.

38. TWO REPORTERS CLAIM JUSTICE DEPT. IS VIOLATING SUBPOENA GUIDELINES; SAXBE SAYS GUIDELINES FOLLOWED

Based on the following article concerning a Justice Department subpoena issued to reporter Tom Blackburn and the Will Lewis subpoena reported above (p. 38), it appears the Justice Department may be violating the 1973 Guidelines for the Issuance of Subpoenas to Newsmen (see *PCN III*, p. 21 for a discussion of the substantive provisions of the Guidelines, especially the provision that the Department "attempt meaningful negotiations with the reporter before a subpoena is served").

JUSTICE DEPT. VIOLATES ITS GUIDELINES IN SUBPOENA TO COLLEGE REPORTER 39.

In March 1973, Long Beach State *Forty-Niner* reporter Tom Blackburn spoke by telephone from California with Indian leader Roger Ironcloud in Wounded Knee during the takeover there.

Based on the interview, Blackburn published an article March 22. The article was cited for an "Achievement Award" from the Long Beach Chapter of the Los Angeles Newspaper Guild and was instrumental in the Guild's choice of Blackburn as the outstanding "Journalist of the Year".

On August 26, Justice Department officials subpoenaed Blackburn to testify in Lincoln, Nebraska at the Wounded Knee trial with all "records, notes, and documents" relating to conversations with Ironcloud on trial there.

First Subpoena

The Reporters Committee protested the subpoena to Attorney General William Saxbe on the grounds that the U.S. Attorney who had obtained the subpoena had not gotten the Attorney General's specific approval as required by the 1973 "Guidelines for the Issuance of Subpoenas to the News Media."

Justice Department officials said that special U.S. Attorney Duane Nelson, who sought the subpoena, apparently had not realized that the Guidelines extended to members of the college press and that no harrassment of Blackburn was intended.

Second Subpoena

The subpoena was quashed and subsequently reissued later the same day with Saxbe's specific approval.

The second subpoena was withdrawn the following week and Blackburn was not required to testify at the Ironcloud trial.

An official in the prosecutor's office explained the withdrawal by noting that Blackburn's testimony was "irrelevant" to their case against Ironcloud. Blackburn's attorney, Peter Young, said that Justice Department officials told him they wanted Blackburn's testimony to link Ironcloud to the Wounded Knee area on April 27, five weeks after Blackburn's only conversation with Ironcloud.

Young said that the second subpoena appeared to violate at least four substantive aspects of the Guidelines including provisions requiring that:

- "reasonable attempts" be made to obtain information from non-media sources before subpoenaing newsmen;
- subpoenas be "directed at material information regarding a limited subject matter";
- there be reasonable grounds to believe the information is "essential";
- there be "negotiations with the media" when subpoenas are contemplated.

40. SAXBE DEFENDS JUSTICE DEPARTMENT RECORD ON MEDIA SUBPOENAS; SAYS NEWSMEN COOPERATE

In a September 12 speech to the Radio-Television News Directors Association meeting in Quebec, Attorney General William Saxbe discussed his order to quash the first subpoena issued to reporter Tom Blackburn (see above) and elaborated on the Justice Department's use of the "Guidelines for the Issuance of Subpoenas to Newsmen" (see *PCN III*, p. 21).

"A subpoena," Saxbe said, "is issued to a newsman only as a last resort—after all other attempts by the Department have failed to obtain the desired evidence from other sources. Even when those efforts fail, and we go to the news media, we seek voluntary compliance."

Saxbe noted that in his eight month tenure as the Attorney General, he had authorized 15 subpoenas to reporters. "In most of those instances," he said, "newsmen were willing to cooperate—but requested the subpoena first be served."

Saxbe also noted that the Guidelines provided a "final check and balance within the Department" by requiring subpoenas against newsmen to be specifically authorized only by the Attorney General. "The final safeguard," Saxbe said, "for anyone receiving a subpoena is that he can go to court and contest our position."

Media observers have construed Saxbe's statement to be an acknowledgement that the news media may raise deviations from the Guidelines as an affirmative defense in the courts against the issuance of subpoenas.

IV FAIR TRIAL – FREE PRESS/ACCESS TO THE JUDICIARY

Federal Judiciary

Watergate Trial

1. FREE PRESS-FAIR TRIAL AT ISSUE IN WATERGATE COVERUP TRIAL

The Watergate cover-up trial, which opened in Washington October 1, has become a case study in the developing fair trial-free press conflict and secrecy in the courts.

The tension between the defendants' Sixth Amendment rights to a fair trial on one hand, and the public's "right to know" and the right of the press to report on a matter of unparalleled political importance on the other, has troubled the proceedings from the beginning of the Watergate criminal investigations (see *PCN IV*, pp. 9-12).

But the trial itself is the one event most likely to shape the future of informal disputes and litigation in the fair trial-free press area.

The secrecy attached to the trial, criticized by many observers as excessive, could accelerate what already appears to be an increasing incidence of judicial "gag orders" and other restrictions on access by the public and the press to court proceedings.

The list of secret aspects of the trial, discussed in further detail below, includes: Judge Sirica's sealing of the *voire dire* and refusal to release transcripts of the questioning; numerous conferences and motions *in camera*; repeated sealing of pleadings and other documents filed in the trial; and a gag rule prohibiting statements to the press by all participants in the trial, which was not lifted or modified even after the jury was sequestered.

2. SWEEPING GAG ORDER ENFORCED AFTER JURY SEQUESTERED

After the indictments of the Watergate cover-up defendants, Judge Sirica issued a broad order designed to restrict pre-trial publicity. He specifically prohibited the special prosecutor's office, the defendants, their attorneys "and all persons acting for or with them" and all witnesses under subpoena from "making extra-judicial statements concerning any aspects of this case that are likely to interfere with the rights of the accused or the public to a fair trial by an impartial jury." (See *PCN IV*, pp. 10-11).

Judge Sirica originally indicated his primary concern was to make sure that massive pretrial publicity would not make it impossible to find an impartial jury. But, with one minor exception, the gag rule was not relaxed even after a jury was sequestered on October 11 and publicity could no longer affect its deliberations.

On October 3, Judge Sirica made one modification of his original order. He announced that witnesses would be released from the gag order once they have appeared in court.

During a session of the cover-up trial in late October, Judge Sirica warned that the gag remained fully in effect. Although the text of the original order did not mention former prosecutors whose involvement in the proceedings has ended, he said they were covered as well. Reprimanding former Special Prosecutor Leon Jaworski and former Counsel to the Special Prosecutor Philip Lacovara for recent statements on Watergate issues, the judge told the courtroom, "I would hope everybody would keep his mouth shut. And that includes Mr. Jaworski, Mr. Lacovara and everybody else."

3. DEFENDANTS FLOOD COURT WITH MOTIONS ALLEGING PREJUDICIAL PUBLICITY

From the time of their indictments on March 1, 1974 until the opening of the cover-up trial in October, the five Watergate defendants repeatedly and routinely filed motions with the court alleging that massive Watergate publicity had prejudiced their Sixth Amendment rights to a fair trial.

Most of the motions were requests for dismissal or indefinite postponement of the trial. All were denied.

Many of the motions, sometimes lengthy in themselves, were accompanied by still longer appendices containing copies of the newspaper articles and transcripts of the broadcast reports complained of.

This massive documentation is an apparent effort to build a record enabling the defendants to claim prejudicial publicity as grounds for reversal on appeal.

The final wave of motions for dismissal, generated by President Ford's blanket pardon of Richard Nixon on September 8, was typical of numerous similar motions filed earlier.

On September 12, John Ehrlichman moved for dismissal or continuance until January 1975, alleging that publicity surrounding the pardon carried a clear implication that Ehrlichman, as a key aide to Nixon, was guilty of the charges against him.

"The media in the District of Columbia has determined that the Nixon administration was corrupt and has consciously selected its news coverage in such a way so as to assure that public opinion will accept this view and in the process has succeeded in depriving defendant Ehrlichman of any semblance of a fair trial," the motion argued.

The same day, H.R. (Bob) Haldeman moved for dismissal of the indictment or indefinite postponement of trial on the ground that he had been deprived of a fair trial by the pardon "which created a new dimension of adverse publicity."

A similar motion filed the same day by John Mitchell argued the pardon "had escalated the prejudicial publi-

Watergate Trial cont'd.

city in all the media to unprecedented heights in the annals of American jurisprudence." Seeking an indefinite continuance of the trial, Mitchell also complained that President Ford had "further inflamed the atmosphere by publicly agonizing over whether or not further pardons are to be issued for all 'Watergate persons.'"

Although he had filed a similar motion just 13 days earlier, Haldeman filed still another motion for dismissal or indefinite continuance on September 25. This time, Haldeman complained that recent news reports in *The Washington Post* and on *CBS-TV* contained factual inaccuracies.

In another motion filed just a few weeks before trial, John Mitchell unsuccessfully moved to waive his right to have the jury sequestered. Arguing that a more representative panel would be found if the jury was not sequestered, lawyers for Mitchell added, "Since we believe that the prospective jury has already been indelibly prejudiced against John Mitchell by reason of publicity surrounding the impeachment hearings and the resignation of President Nixon, no publicity generated by the mere trial of this matter could further adversely affect jury deliberations."

4. SIRICA QUESTIONS JURORS IN SECRET: THEN SEALS TRANSCRIPTS

Within a few days of the official opening October 1 of the Watergate cover-up trial, a red sign on a wooden frame reading "GENERAL PUBLIC AND MEDIA PERSONNEL NOT PERMITTED BEYOND THIS POINT" was placed at the courtroom door. It stayed there for the greater part of the trial's first two weeks.

At Judge Sirica's insistence, the screening of potential jurors—officially known as "voire dire"—was held in secret. The judge sealed the courtroom October 3 after allowing the public and press to view only initial general questioning.

Judge Sirica did not issue any order or statement explaining his action. His law clerk later explained that although prevention of prejudicial publicity was one reason for the unusual procedure, a desire to encourage the jurors to be candid was another reason.

Occasionally, there were breaches in the secrecy of the *voire dire*. For example, reporters learned that Judge Sirica was asking many questions about the impact of the House Judiciary Committee's televised impeachment proceedings and of President Ford's pardon of Richard Nixon.

But often, reporters had to make do with stories discussing *proposed* questions which the judge *might* be using to examine the jurors. The press was given access to suggested lists of questions filed with Judge Sirica by the defense and prosecution.

And sometimes, the only information which reporters were able to obtain was the number of prospective jurors tentatively accepted by the end of a given day.

But on October 4, Judge Sirica clamped a lid on publication of even that information. Demanding more secrecy, the judge opened that day's closed door session with a warning to lawyers not to tell newsmen how much progress was being made in finding jurors. "He made it very clear that we were not to say how many were picked—it was the first thing he said," one lawyer told *Washington Star-News* reporter Barry Kalb.

After two weeks of questioning, a jury of nine women and three men was finally sequestered on October 11. Only the name, age and occupation of the jurors were released to newsmen.

Although the jury was then locked up out of reach of newspapers and television, Judge Sirica refused to make public transcripts of the secret jury questioning.

FORD TESTIMONY ON HILL RE NIXON PARDON DELAYED: PUBLICITY RISK CLAIMED 5.

President Ford was scheduled to testify to Congress October 10 about facts underlying his pardon of former President Nixon.

At the request of Special Prosecutor Leon Jaworski, however, the House Judiciary Committee's Subcommittee on Criminal Laws voted to delay the President's testimony one week because a jury in the Watergate cover-up case had not yet been chosen. It was reported that such a delay had been favored by Judge Sirica, who was known to be closely questioning prospective jurors about the effect the Nixon pardon might have on their attitude toward the case.

The subcommittee, headed by Rep. William L. Hungate (D.-Mo.), indicated it acted out of concern that press coverage of Ford's testimony before a jury was sequestered might prejudice the defendants' rights to a fair trial.

Hungate issued a brief statement October 8 announcing the delay and declined to elaborate. "I'm a lawyer. This is Congress. I'm not going to gum up the works," he told a *Washington Post* reporter in refusing to answer questions.

Only one subcommittee member, Rep. Wiley Mayne (R.-Iowa), dissented. Mayne told reporters he believed the American people had a right to be fully informed about the pardon at the earliest possible date. He discounted the risk of prejudicial publicity because in his opinion, the panel members, who are all lawyers, would have been able to phrase their questions so as to protect the defendants.

The cover-up jury was sequestered when Ford made his rescheduled appearance October 17 before the House Judiciary subcommittee.

Watergate Trial cont'd.

The President declined to say whether he thought that pardons should be given to Watergate defendants now on trial. He explained it would be "inappropriate" to comment about a pending trial, although nothing that Ford now said could affect the locked-up jury.

Actually, Ford did comment directly on the trial by saying he believes that the acceptance of the pardon by Nixon was tantamount to acknowledgement of guilt.

6. SIRICA SUGGESTS PRESS SUBPOENAS

In July 1973, John Mitchell and John Ehrlichman told the FBI they knew nothing about the Watergate break-in except what they had read in the newspapers.

Subsequently, these disclaimers resulted in charges of lying to the FBI against both Mitchell and Ehrlichman, each of whom was also charged with conspiracy and obstruction of justice in the Watergate cover-up.

To support the charges of lying to the FBI, the prosecution has to prove both what Mitchell and Ehrlichman actually knew, and that their knowledge could not have been gained from the newspapers.

To make such a showing, Assistant Watergate Special Prosecutor Richard Ben-Veniste unsuccessfully attempted October 30 to question Jeb Stuart Magruder as an expert witness about newspaper coverage of Watergate.

Judge Sirica cut short the novel line of questioning, saying some legal research was necessary to find out how one should prove—in effect—what the newspapers did *not* say.

"Couldn't you get a subpoena out for the editor of a newspaper—*The Star* or *The Post*?" the judge queried.

Ben-Veniste responded it might be possible to subpoena *Washington Post* executive editor Benjamin Bradlee or reporters Bob Woodward or Carl Bernstein. He suggested such subpoenas "wouldn't involve confidential sources."

The idea of calling newspersons to testify about what Watergate information did not appear in the newspapers was later dropped. Instead, Powell Moore, a former press officer for the Committee to Re-elect the President, was called to testify.

7. COURT DENIES NETWORK REPORTERS' REQUEST TO REPRODUCE AND BROADCAST TRIAL TAPES

In a letter dated September 17, Fred Graham of *CBS News* requested U.S. District Judge John J. Sirica to allow the reproduction and broadcast of White House tapes introduced as evidence and played before an open court in the Watergate cover-up trial.

Graham's letter, joined in by Carl Stern of *NBC* and David Schoumacher of *ABC*, noted that coverage of the trial would "present special problems to the broadcast media which the print media will not encounter." By allowing reproduction and broadcasting of the tapes, Graham wrote, "the rights of the defendants will not be affected, and much will be done to inform the public as to why and how the Watergate tragedy occurred."

On October 2, Judge Sirica denied the request. In a letter to Graham, Judge Sirica cited, and enclosed a memorandum by George L. Hart, Jr., to whom Graham's request had been referred.

Judge Hart, reporting what he described as the unanimous view of district court judges consulted, expressed concern over the precedent which release of the tapes might establish. "The most troublesome aspect of this proposal in many ways is that there would be played on the electronic media a precise reproduction of what occurred in Court when the tape was played," Judge Hart wrote. "We have staunchly opposed, as you know, any broadcasting of Court proceedings. In a sense, if we allow replay of what occurred in Court, it will be very difficult to explain why we will not let a tape recorder be used by a court reporter to replay the entire proceedings."

8. NETWORKS FILE SUIT CLAIMING FIRST AND SIXTH AMENDMENT RIGHTS TO BROADCAST TRIAL TAPES

Following the denial of Fred Graham's request, *NBC*, *CBS*, *ABC*, and *Public Broadcasting System* and the Radio Television News Directors Association filed a motion in U.S. District Court on November 12, requesting the right to reproduce, following each court session, those White House tapes played at the Watergate cover-up trial.

The networks pointed out that none of the traditional justifications for restrictions on broadcast coverage of court proceedings—prejudicial publicity, "circus atmosphere" in the courtroom and psychological intimidation of witnesses—applied to their request because of the sequestration of the jury and the fact that the taping could be accomplished efficiently and unobtrusively after court sessions.

Absent any showing of "clear and present danger" to the judicial process, the networks argued, a denial of access to the tapes was both a prior restraint on freedom of the press in violation of the First Amendment and a denial of the public trial guarantees of the Sixth Amendment.

9. SIRICA SEALS NIXON DOCUMENTS

On October 3, lawyers for former President Nixon moved to quash subpoenas calling for his appearance in the Watergate cover-up trial. Judge Sirica immediately put the Nixon pleadings under seal. He refused copies even to Watergate special prosecutors or defense lawyers.

"I don't want any leaks," the judge explained. He said the documents would remain under seal to prevent press reports from prejudicing the jury selection process which was then underway.

Sealed by the judge's order along with the Nixon motions was a document filed by John Ehrlichman, the former White House aide who had subpoenaed Nixon. The former president has also been subpoenaed to testify by the special Watergate prosecution.

After the cover-up jury was sequestered on October 11, Judge Sirica unsealed the Nixon motions and the Ehrlichman document. The Nixon documents argued that the former president's illness prevented his court appearance. In his document, Ehrlichman implicated Nixon in the cover-up and argued that the former president's testimony was necessary to his defense.

The judge also unsealed a number of other previously secret documents, including demands by Ehrlichman and Haldeman for a pre-trial deposition by Nixon.

10. THE WATERGATE DOCKET: A TALE OF SECRECY

The daily entries of proceedings in the case of *United States v. John N. Mitchell et al.* recorded in the Criminal Docket of the United States District Court for the District of Columbia, tell their own narrative of the secrecy attached to the cover-up trial.

Listing events in the courtroom of Judge Sirica from the date of indictment through trial, the docket is replete with references to *in camera* proceedings and pleadings and other documents put under seal.

Many of the sealed documents and secret proceedings appear to have related to the White House tapes. But the subject matter of many others is not indicated.

In a typical three-month period, 11 times in August, 10 in September and 18 in October, there appears the boldfaced notation: "FILED AND SEALED UNTIL FURTHER ORDER OF THE COURT." It is not indicated in the docket how many, if any, of these papers have since been unsealed.

11. NEWSMEN PROTEST SECRECY; LETTER SEALED

The Watergate docket for October 13, 1974 contains a cryptic reference to a letter from *CBS News* correspondent Fred Graham and *Washington Post* reporter George Lardner, and a Sirica reply.

Graham and Lardner say this is an apparent reference to a letter they wrote expressing concern about secrecy in the trial, and a reply by the judge defending his practices.

The correspondence has been sealed until further order of the court.

12. LT. CALLEY VIETNAM ATROCITY CONVICTION OVERTURNED—PRETRIAL NEWS INFLUENCES COURT MARTIAL JURORS

Former Army Lieutenant William L. Calley, Jr. was convicted of murder for his participation in the 1968 "My Lai Massacre" in South Vietnam. At Calley's Fort Benning, Georgia, court martial and in subsequent appeals to the Court of Military Review and the Court of Military Appeals, his defense attorneys raised the argument that massive nationwide publicity on Calley and the My Lai incident had made a fair trial impossible.

The court martial judge and the military appeals courts rejected the prejudicial publicity claims. Last December, the Court of Military Appeals—the highest court in the military justice system—stated that most of the publicity was "factual and impersonal" and that much of it was favorable to Calley. The court held that the extensive *voir dire* examination of the military officer jurors was sufficient protection against any damaging effects of the publicity.

In September, however, in response to a habeas corpus petition, a federal court judge in Georgia ruled that Calley's conviction was invalid because 1) the court martial jurors were exposed to "massive and virulent publicity"; 2) Calley was denied the right to call certain high-ranking Defense Department officials as witnesses; 3) he was denied access to a secret House Armed Services Committee report on My Lai; and 4) the charges against him were not sufficiently specific.

Publicity Called Unprecedented

The major part of Judge J. Robert Elliott's 132-page opinion was devoted to an exhaustive recitation and analysis of the news stories that preceded Calley's trial, including accounts on three major networks, in *Time, Newsweek, Life, The New York Times* and numerous other publications. "Never in the history of the military justice system, and perhaps in the history of American courts, has any accused ever encountered such intense and continuous prejudicial publicity," Judge Elliott concluded.

Calley's name, he said, had become unalterably associated in news stories with words like "atrocity," "mass murder" and "massacre" so that "...by the fall of 1970 Calley had been crucified on a cross of newsprint and television tape."

Because the publicity was so widespread, Judge Elliott said that it would be "sheer fantasy" to presume the jurors were not influenced by it no matter how careful the *voir dire* examination. He also stated that the publicity based on public statements and press interviews of prospective witnesses was "calculated to prejudice the triers of fact against the Petitioner" and that it would be "unreasonable" to assume the jurors were not prejudiced by the witnesses' statements.

Calley Paroled

Judge Elliott noted that the military judge in the court martial proceedings had virtually no power to limit the effects of the publicity. For example, although the military judge had ordered prospective witnesses not to make any out of court statements concerning the case, the judge had no contempt power under military law to enforce the order, and the witnesses talked freely with the press.

Because "every citizen of this nation, no matter how notorious, has the right to be tried in a court, whether military or civilian, that can protect him against prejudicial coverage by the news media," the lack of such authority in a military court denied Calley due process, Judge Elliot said.

An appeals court stayed Calley's release temporarily pending a government appeal of the District Court order but the Army later released him on parole. The government still plans to appeal Judge Elliott's decision despite the parole.

13. **FED. COURT CONDEMNS JUSTICE DEPT. FOR GIVING MEDIA PUBLIC RECORD BACKGROUND INFO. ON PENDING CRIMINAL CASE**

In December 1973, the U.S. District Court in North Carolina voided a criminal drug mislabeling indictment handed down against Abbott Laboratories, Inc. and five of its present or former employees on the grounds that Justice Department and Food and Drug Administration officials had conspired to deprive the defendants of a fair trial by improperly releasing prejudicial publicity in the case. (see *PCN IV*, p.13 & *PCN V*, p. 51).

The conspiracy consisted mainly of statements by Justice Department officials who, in response to press queries, confirmed that the mislabeled drug was the same drug that had been the subject of a nationally distributed U.S. Public Health Service report some 18 months previously.

The U.S. Public Health Service Report, which was also the subject of a *Newsweek* cover story, said that 9 deaths and 150 cases of blood poisoning were linked to the drug. The day of the indictment, the Food and Drug Administration updated the report to 50 deaths and 300 cases of blood poisoning.

The death and poisoning background information was carried by *UPI* and by a local TV station, *WRAL-TV* in Raleigh. The Justice Department appealed the dismissal. In October the U.S. Court of Appeals for the Fourth Circuit reversed the dismissal and reinstated the indictment.

It said that the pretrial publicity surrounding the Abbott indictments was "prejudicial and highly inflammatory" but concluded that dismissal was "too drastic a remedy for what misconduct on the part of the government occurred."

The Court also joined "in the district court's condemnation" of federal officials making statements to the press while the case was still pending and expressed its "strongest disapproval that highly placed legal officers" made public references inferring the guilt of the accused.

The opinion would appear to prevent public officials telling the press about widely disseminated public record background information in criminal cases in which the government is involved.

NOTE: In an apparent reaction to the Abbott Labs decision, Attorney General William Saxbe distributed a memo September 17 to all government agencies urging them to check with the Justice Department before talking to newsmen and the public about pending court cases. "It is clear that Government cases may be dismissed if publicity for which the government is responsible irreparably prejudices the trial atmosphere," Saxbe said.

14. **FED COURT DECISION FIRST TO GIVE MEDIA NOTICE AND HEARING IN GAG ORDER CASES** (See this *PCN*, p. 5)

15. **SUPREME COURT ASKED TO HEAR TIMES-PICAYUNE GAG ORDER CASE** (See this *PCN* p. 5)

16. **FED. COURT HOLD SECRET SESSION, GAGS PARTICIPANTS**

In late September, the U.S. District Court in Mississippi conducted a controversial civil rights trial brought by an ex-convict against certain Parchman State Prison officials. The suit alleges that the defendants were negligent in not protecting the prisoner from attacks by other prisoners.

After the presentation of the evidence, Judge Orma R. Smith read 36 questions to the jury as part of his instructions. On October 4, the jury informed the judge that they had answered 26 of the questions, and had found all but one defendant guilty of negligence.

Just as he was beginning to read back to the jury some of the answers to these questions, Judge Smith barred all members of the public and the press from the courtroom.

During the secret session, the judge ordered those present not to discuss with reporters anything that had occurred during the session.

The judge, when questioned by a reporter, refused to explain why he held the closed session. The two reporters excluded were Edward Kohn of the *Delta Democrat-Times* and James Leggett of the *Memphis Commercial Appeal*.

17. LONDON TIMES SUES IN CALIF. TO ATTEND DEPOSITIONS IN A PLANE CRASH CASE

On March 3, 1974, a DC-10 McDonnell Douglas airliner crashed near Paris, killing all 346 passengers. It was the worst single accident in the history of aviation.

The families of those killed filed suit in U.S. District Court in California against McDonnell, alleging negligence in the design of the luggage compartment door, which allegedly opened while the flight was in progress.

The *London Times* started an investigation into the cause of the crash and sought transcripts of pre-trial depositions in the case.

On July 15, McDonnell asked the court to bar reporters from obtaining the transcripts. Judge Pierson M. Hall denied the motion.

On July 17, Dr. Elaine Potter, a reporter for the *Times*, attempted to attend the taking of a deposition. Counsel for McDonnell prevented Potter from attending the session.

On September 12, the *London Times* asked for an injunction ordering McDonnell to allow the public and the press to attend all pre-trial discovery hearings.

The *Times* claimed that the taking of a deposition under the subpoena power of the court is an integral part of a public trial. Under present law, the only time a trial can be closed to the public is when a clear and present danger to the right of fair trial exists. The *Times* said that this standard applies to the taking of a deposition.

The *Times* stated that the availability of the transcripts of the depositions is an insufficient remedy, since there is a minimum delay of 40 days between when a deposition is taken and when the transcript is available.

The *Times* also expressed concern that if a pre-trial settlement is reached in any of these cases, the public's right to know would be limited by the unavailability of the information in the depositions.

On October 15, McDonnell moved to dismiss the *Times* complaint and said that the transcripts should be sealed until the trial. It also stated that Federal Rule of Civil Procedure 26 (C) (5) authorizes that the public be excluded from the taking of a deposition. (Rule 26 (C) (5) states that "discovery be conducted with no one present except persons designated by the court.")

A ruling on the *Times'* motion has not yet be made.

18. NEWS MEDIA ACCESS TO PRE-TRIAL PROCEEDINGS IN CIVIL CASES

There has long been an unresolved controversy about press access to pre-trial proceedings in civil cases.

The media contends that pre-trial documents and testimony should be available because they are taken under the formal process of the courts, backed by the contempt power and therefore are public records. In the recent Watergate civil cases, depositions were made available to the press, for example.

Some lawyers argue that pre-trial discovery items should only be available when and if they are formally presented to the court in support of a motion or in the trial itself. They argue that the depositions may prove to be useless, and may never be filed or brought to the court's attention.

They also argue that many persons would oppose broad discovery if they knew that the press would have access to all items.

19. N.Y. JUDGE SETS SECRET SETTLEMENT IN FALSE ARREST SUIT

In January 1973, the New York State Court of Appeals overturned a 1971 conviction of Tarrytown IBM executive Lawrence Tate, found guilty of obstruction of justice and maintaining a disorderly house following the arrest of Tate's daughter and 12 of her friends on drug charges.

Cleared of the charges, Tate filed a $2.3 million federal damage suit against Tarrytown, Irvington and Westchester County charging them with malicious prosecution. The suit was settled March 1, 1974, for an undisclosed amount, reported by the *New York Times* to be "five figures."

Judge Milton Pollack of the U.S. Southern District Court directed parties and attorneys to give no information about the settlement except that the case had "amicably terminated."

Attorneys connected with the case have refused to tell reporters if there was a settlement and if so for how much, although Tate's attorney told the *Tarrytown Daily News* that "five figures was generally accurate." The gag was instituted by Pollack "to protect all parties," according to an unnamed source quoted in the *Tarrytown Daily News*.

20. US DISTRICT COURT JUDGE FOR TV IN COURT

U.S. District Court Judge Robert R. Merhige, Jr., speaking before the Richmond chapter of Sigma Delta Chi in early October, said he believes courtroom proceedings should be opened to the electronic media, provided that equipment used by broadcasters is not disruptive. He indicated that courtroom bans on radio and television violated the First Amendment and said he thinks broadcast journalists have the same rights as print journalists. The Judicial Conference of the U.S., which makes rules for the federal courts, has prohibited courtroom TV.

21. ST. LOUIS JUDGES PERMANENTLY BAR ALL POST-TRIAL INTERVIEWS OF JURORS

The U.S. District Court for the Eastern District of Missouri adopted court guidelines August 29 barring anyone for all time—including the press—from interviewing jury members after a trial is over without the court's permission.

Judge John K. Regan drafted the rules on the basis of similar rules used by the federal judges in Texas. Regan explained the rule saying, "There was no intent to interfere with the press. The reason was to protect the jurors—to remove an irritant associated with serving on juries."

Regan told local media reporters that jurors, especially in negligence cases, had complained to the court about questions from attorneys attempting to discover reasons for their verdicts.

Federal District Judge H. Kenneth Wangelin invoked the rule in September, denying reporters the right to interview jurors about their decision to convict Ronald Calvert of mail fraud in a highly celebrated case in St. Louis.

The Rule reads:

> "RULE XVI. JURORS NOT TO BE INTERVIEWED. No attorney or any party to an action or any other person shall himself or through an investigator or other person acting for him interview, examine or question any juror, relative, friend or associate thereof, either during the pendency of the trial or with respect to the deliberations of verdict of the jury in any action, except on leave of court granted upon good cause shown."

Although most of the 94 federal judicial districts have rules regarding juror interviews, very few apply to more than the parties involved in the case, according to Carl H. Imlay, general counsel for the Administrative Office of the U.S. Courts in Washington.

In response to a letter from The Reporters Committee to Eastern District Chief Judge James H. Meredith regarding Rule 16, Meredith said he would be willing to meet with the news media to discuss the rule.

PUBLIC RECORD CRIME DATA RESTRICTIONS

22. For various moves to deny to the press (but not to
23. the police or other government agencies) federal
24. public record crime data information by the FBI,
25. LEAA and Congress, see this *PCN*, p.52.

State Judiciary

ALABAMA POLICE SEAL ARREST RECORDS 26.

(See this *PCN*, p. 54)

CALIF. LEGAL EXPERIMENT ACCUSED OF ETHICS VIOLATIONS FOR INTERVIEWS WITH L.A. TIMES, NEWSWEEK, ETC. 27.

The "Legal Clinic of Jacoby & Meyers," a private Los Angeles law office that has gained nationwide publicity for its efforts to provide streamlined low-cost legal services to low and middle-income clients, has been charged by the State Bar of California with unlawfully advertising its services.

The complaint against the two attorneys, Leonard Jacoby and Stephen Meyers, charges that they held an open house at their offices during which they "willfully furnished detailed information" concerning the operation of their law practice to members of the Los Angeles news media.

Most of the complaint is then devoted to listing the numerous occasions on which Jacoby and Meyers "willfully participated" in interviews with the press, including three Los Angeles newspapers, *Newsweek* and the *Christian Science Monitor*. Such media contacts, according to the bar complaint, constitute advertising and solicitation of employment in violation of the state professional code.

Jacoby and Meyers, in a response filed in September, said that they participated in interviews and furnished information about their law practice to the press only in response to requests from reporters. They contended that the prohibition against advertising legal services, as construed against them, violates their rights to freedom of expression and association.

They also claimed that they have been unfairly singled out for disciplinary action because other legal offices—such as legal aid societies—have disseminated information about their services to the press and public and have not faced charges from the State Bar.

A hearing before a committee of the State Bar is planned.

SLA DEFENDANTS WIN TRIAL SITE CHANGE 28.

Joseph Remiro and Russell Little, two suspected members of the Symbionese Liberation Army charged with the murder of Oakland school superintendent Marcus Foster, won a change of venue for their trial. The

California Court of Appeals ordered the change on the grounds that pre-trial publicity connecting the defendants to the SLA might prejudice a jury from the Berkeley-Oakland area and reduce their chances for a fair trial.

The new site for the trial has not been chosen.

(See *PCN IV*, p. 25 for story on police raid on Pacifica radio station *KPFA* in the Remiro-Little investigation.)

29. **FARR FREED UNDER CA. SHIELD LAW** (See this *PCN*, p. 34)

30. **CALIFORNIA NEWSPAPERS AGREE TO SECRET WITNESSES** (See this *PCN*, p. 6)

31. **CONN. CHIEF JUSTICE SAYS LAW FOREVER BARS MEDIA INTERVIEWS OF JURORS**

The Chief Justice of the Conneticut Supreme Court, Charles S. House, told a seminar of judges Sept. 16 that jurors oaths swearing them to secrecy were effective forever. House later said that although there are no court opinions adopting this view, "there is a consensus of opinion" that the secrecy oaths last eternally and were necessary to protect the jury system.

The Connecticut secrecy oath requires that jurors "speak nothing to anyone, of the business or matters you have in hand, but among yourselves, nor will you suffer any one to speak to you about the same, but in court."

32. **D.C COURT CHARGES DAMAGES TO WASHINGTON POST FOR PUBLISHING RAPE VICTIM NAME** (See this *PCN*, p. 54)

33. **GEORGIA LAW SEALS RAPE VICTIM NAMES** (See this *PCN*, p. 53)

34. **IDAHO JUDGE BARS PAPER FROM PUBLISHING ITS OWN DEPOSITIONS IN LIBEL ACTION** (See this *PCN*, p. 5)

35. **MASS. SEALS CONVICTION RECORDS** (See this *PCN*, p. 52)

36. **N.J. CHIEF JUSTICE DEFENDS REPORTER SEEKING TO COVER COURT HEARING**

On June 5, 1974, Elizabeth, (N.J.) *Daily Journal* reporter James M. Dolan wrote Superior Court Judge Arthur J. Blake a letter "respectfully protesting" his decision to hear *in camera* arguments on a question concerning grand jury testimony (see *PCN V*, p. 47).

Blake later publicly rebuked Dolan in open court for being "impudent" and warned him that he would be held in contempt if his orders were protested again. In response to protests to State Supreme Court Justice Richard Hughes, lodged by the New Jersey Newspaper Guild and the *Daily Journal*, Hughes said the contempt threat was "inappropriate." Hughes invited news organizations in the state to work with the state courts to resolve issues of possible conflict.

37. **MANDATORY PUBLICATION OF ACQUITTALS VETOED IN N.J.** (See this *PCN*, p. 57)

38. **N.Y. HIGHEST COURT SEALS SOME RECORDS IN JUDICIAL MISCONDUCT CASE**

Four years ago, William F. Suglia, a New York City Criminal Court judge, was accused of sexually molesting a woman court employee in his chambers and with appearing to give special consideration in a drug charge case against the woman's son. The charges were drawn by the New York State Appellate Division's Judiciary Committee.

After a hearing behind closed doors, the Committee dropped the first charge and sustained the special consideration charge. The Appellate Division then censured Judge Suglia and ordered that the entire file in the case be sealed.

Mary Perot Nichols, city editor of *The Village Voice*, unsuccessfully sought to examine the record of proceedings in the case.

Nichols, who had been investigating judicial administration in New York since 1971, filed suit to compel the court clerk to permit inspection of the Suglia record. She based her suit on the United States and New York Constitutions and various state freedom of information acts.

In June 1973, the Appellate Division, Third Department directed that the record be made available for public inspection. Because no state statute requires records of a formal disciplinary proceeding against a judge to be kept confidential, the court found there was a clear legislative intent to keep such proceedings public. The court rejected as "unpersuasive" the suggestion that a court has inherent power to seal its own records in the absence of express statutory authority.

On appeal, however, the New York State Court of Appeals modified the Appellate Division's judgment, ordering that only that portion of the record bearing on the charges sustained against Judge Suglia could be disclosed. The court added that it might be an "abuse of discretion, as a matter of public policy" not to disclose records bearing on charges sustained against a judge. But the court went on to declare that all portions of the record not dealing with charges sustained against Judge Suglia should be kept confidential. As a general rule, the court declared, "internal judicial investigations of charges or complaints against judicial officers are confidential."

The Court of Appeals sent the matter back to Appellate Division which will now decide what portion of the record Nichols can see, and what portions will be kept confidential.

39. REPORTER GRANTED LIMITED ACCESS TO TAPE TRANSCRIPTS

In late September, certain tape recordings were introduced as evidence in a criminal trial taking place in Brooklyn Supreme Court. Because the recordings were extremely difficult to hear, Judge John M. Murtagh allowed transcripts of the tapes to be introduced as evidence for the limited purpose of aiding the jurors while the recordings were being played.

The transcripts were admitted as "mechanical aids" to the jury, and the only testimony the jury was supposed to consider was the actual recorded tape.

Mary Breasted, a reporter for *The New York Times*, requested that she be allowed to examine the transcripts of the tapes. The judge denied this request.

On October 1, an attorney for *The Times* appeared in Court and Judge Murtagh agreed that from that point on, a reporter could have access to the transcipt of a tape while the tape was being played. The transcript was to be taken away after the tape was played. The judge noted that the transcript "is not evidence itself, and is not to be reflected [as such] in the press."

No arrangements were made concerning the transcripts of tapes played earlier in the trial.

40. OHIO REPORTER HELD IN CONTEMPT FOR TRIAL REPORTING (See this *PCN*, p. 6)

41. OREGON ATTORNEY CENSURED FOR TALKING TO PRESS

Charles O. Porter, a Eugene, Oregon attorney, was retained by the husband of a woman who froze to death in the Cascade Mountains while taking survival training provided by an Outward Bound School.

In February 1973, Porter was charged by the Oregon State Bar with unethical conduct. He was accused of five separate violations of a state disciplinary rule prohibiting attorneys from making extra-judicial statements which are "reasonably likely to interfere with a fair trial" of a civil action.

The attorney was charged even though all but one of the statements complained of were published before the filing of any lawsuit.

The statements, published in the Eugene *Register-Guard* and broadcast on Eugene radio station *KPMW*, included two comments about witnesses, a remark that "the basis of our suit" would be alleged poor instruction by the Outward Bound School on the hazards of getting chilled, a prediction that the school would eventually settle and—in the only statement published after the lawsuit was filed—a statement that an inadequate settlement offer was the reason the case was being litigated.

An Oregon State Bar trial committee recommended dismissal of the charges, but the Bar's Board of Governors later found Porter guilty on all counts.

In April 1974, the Supreme Court of Oregon affirmed, issuing an opinion the court said would "stand as a public reprimand to the accused."

The court found all the statements made by Porter were "reasonably likely to interfere with a fair trial" as provided by the Oregon disciplinary rule. "Such continual haranguing of the public through the news media about the virtues of his client's case and vices of the opposition would tend to have some effect and was certainly unprofessional," the court stated.

Suggesting that lawyers have narrower First Amendment rights than laymen in some circumstances, the court said that lawyers are subject to special "ethical considerations and restrictions."

Porter appealed to the Supreme Court, which has not yet decided whether to review the case.

42. HOUSTON TORTURE CASE VENUE CHANGE SOUGHT

In August 1973, Elmer Wayne Henley and David Brooks were arrested for taking part in a homosexual ring that allegedly tortured and murdered 27 teenage boys. While in custody of Houston police, Brooks made a full confession which implicated Henley as well as himself. The confession was subsequently published verbatim in both *The Houston Post* and *Houston Chronicle* (see *PCN III*, p. 5).

Henley, who was the first to be tried, was granted a request for change of venue to San Antonio after a Houston judge ruled in late January that "sensational" pre-trial publicity had affected the defendant's right to a fair trial (see *PCN IV*, p. 17). Henley was found guilty on

six counts of murder in July. On November 5, a hearing was set for mid-November to decide if the murder trial for the second defendant, David Brooks, should also be moved from Houston.

43. HOUSTON CHRONICLE DENIED ACCESS TO ARREST RECORDS DESPITE COURT RULING

(See this *PCN*, p. 54)

44. VIRGINIA BANS ALL COMMENTS BY ATTORNEYS TO PRESS IN ALL CASES

Philip Hirschkop, an Alexandria, Virginia, civil liberties attorney, was charged with "unprofessional and unethical conduct" by the Virginia State Bar last May after Hirschkop told reporters that prison officials he was representing in a criminal case were the "good guys" (see *PCN V*, p.46).

The Virginia State Bar has an ethics rule which states that it is "improper for an attorney to acquiesce in the publication of comments in a newspaper concerning causes in which he is engaged or to pose for newspaper pictures to be used in connection with a story about his client's case."

A state bar committee dismissed the charges against Hirschkop last July but Hirschkop is maintaining a suit in federal court challenging the ethics rule and provisions of the state-adopted Code of Professional Responsibility which restricts out-of-court comments by attorneys. He is claiming that the rules act as a prior restraint on his free speech rights and his rights to access to the press. He is also alleging that the rules are discriminatorily enforced against him because he represents "anti-establishment causes."

45. PROCEDURAL DUE PROCESS IN GAG ORDERS

The Reporters Committee has suggested to the American Bar Association and to the U.S. Supreme Court (in the *Times-Picayune* and *Philadelphia Inquirer* cases, see above) that no gag order should be valid unless it is first issued with notice to the affected media, with an opportunity to object and time for appeal—even if this means delaying the trial a week or so.

In surveying all the gag order cases since 1966, this *Committee* has found no instance of a litigated order where the parties most directly affected—the media—had any meaningful notice, hearing or appeal before the order took affect. This *Committee* can find no other segment of the population which is repeatedly subjected to no-notice, no-hearing orders limiting their most fundamental constitutional rights without some semblance of procedural due process under the Fifth Amendment.

This proposal has been favorably received by trial judges at the American Bar Association, by various media members in *ASNE* and *APME* and by media lawyers. For a copy of this proposal, please write to the *Reporters Committe.*

V PRIVACY & LIBEL

Privacy

1. INTRODUCTION: CRIMINAL JUSTICE PRIVACY BILLS STALLED AS BROADER PRIVACY BILLS GAIN IN CONGRESS; ALL PERSONAL DATA WOULD BE SEALED

Support in Congress is growing for "right to privacy" legislation that would severely restrict press access to government information about individuals who have had formal contact with government institutions.

Of particular interest to the news media are:

(1) Bills which would deny the press copies of public record criminal justice information (arrest and conviction records) while making this information available to the nation's 14,000 law enforcement agencies, which means the information would be easily available to politicians but not to reporters. (See *PCN IV*, pp. 33-34 and *PCN V*, pp. 61-62). Introduced in early 1973, these bills are still pending in committee but many congressmen and senators now appear to favor privacy legislation which is broader in scope.

(2) More recently drafted bills restricting press access to *all* government documents containing any personal information about named individuals, even if they are receiving financial grants or are under contract with the government. To prevent abuses of the right to privacy, these bills also attempt to regulate in some respects law enforcement use of personal files, but the legislation would completely rule out press access to any personal data maintained by federal agencies except in the form of raw statistics where no individuals are named. As discussed below, companion privacy bills (H.R. 16373 and S. 3418) applicable to all federal agencies and all types of personally identifiable information are now moving toward floor action in both the House and Senate.

Not only legislative activity, but also litigation to restrict access to personal information appears to have increased in recent months.

2. SENATE PRIVACY BILL: DISCLOSURE PERMITTED FOR LAW ENFORCEMENT PURPOSES BUT NOT FOR MEDIA PURPOSES

The Senate Government Operations Committee voted unanimously in September to approve a privacy bill (S. 3418) which would close for most purposes government files and data banks containing personally identifiable information. Like its House counterpart (H.R. 16373) (see this *PCN*, below), the Senate bill awaits floor action shortly after the November recess.

Unlike the House bill, the Senate bill would be enforceable by the federal government as well as by private citizens. A special five-member independent "Privacy Protection Commission" would be created to police the act, as well as to conduct a comprehensive study of the effect on individual privacy of both public and private data banks.

The Ford Administration, which supports the House bill, has indicated it opposes S. 3418 because of the provision creating a new government commission.

The Senate bill prohibits all federal agencies from disseminating "personal information", with limited exceptions similar to those contained in the House bill (e.g., "law enforcement intelligence information or investigative information," data needed for a census or for the normal duties of a particular agency).

The term "personal information" is broadly defined to include "any information that identifies or describes any characteristic of an individual, including, but not limited to, his education, financial transactions, medical history, criminal or employment record, or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution."

The bill, however, states without explanation that the rule against disclosure of "personal information" shall not apply "when disclosure would be required or permitted" under the Freedom of Information Act.

3. HOUSE PRIVACY BILL-DISCLOSURE GIVEN TO FEDERAL GOVERNMENT, CONGRESS & LOCAL COPS

By a 32-to-0 vote, the House Government Operations Committee approved in September a bill (H.R. 16373) prohibiting all government agencies, with narrow exceptions, from disclosing any information about an individual without his consent. Floor action on the bill, which is strongly supported by the Ford administration, is expected soon after the November elections.

The bill would require that all federal agency records maintained on individuals in files or data banks be kept confidential, except in cases where there is a specific statute requiring disclosure. The bill does not state whether the Freedom of Information Act is such a statute.

Unlike an otherwise similar Senate bill (S. 3418) (see this **PCN**, above), the bill does not give the government any power to enforce its provisions. Rather, the bill is enforceable only by private citizens.

Any citizen would be entitled under the bill to see, copy and request correction of information on him in federal files, except at such agencies as the CIA, FBI and the Secret Service. Any agency refusing such a request would have to state its reasons, and tell the citizen how to appeal.

If a federal agency violated the law, an affected person could sue in federal court for an injunction ordering compliance. The individual would also be entitled to sue for damages if the agency's action was "willful, arbitrary or capricious." Federal officials who "willfully" violate

the Act and persons who seek personally identifiable government data under "false pretenses" would be subject to criminal penalty, a fine of up to $5,000.

Access to federal records pertaining to individuals would be allowed only for certain governmental purposes. These exceptions include information needed for the duties of a federal agency or unit of Congress, for a census, or for historical preservaton by the National Archives. The bill also makes an exception for information needed for a "law enforcement activity" requested in writing by a federal, state or local agency.

4. SENATE CRIMINAL JUSTICE PRIVACY BILLS

Two separate bills which would restrict dissemination by federal, state and local agencies of criminal records and other criminal justice information remain pending in the Senate Judiciary Subcommittee on Constitutional Rights.

Both measures, a Justice Department version sponsored by Sen. Roman Hruska (R-Neb.) (S. 2964) and a bill sponsored by Sen. Sam Ervin (D-N.C.) (S. 2963), were introduced in February 1974 (see *PCN IV*, p. 33 and *PCN V*, p. 61).

The Justice Department reported in November it was in the process of rewriting its version.

5. FEDERAL LAW SEALS JUVENILE PROGRAM & COURT RECORDS FROM MEDIA BUT GIVES THEM TO LOCAL POLICE & COURTS

The Juvenile Justice and Delinquent Act of 1974 (S. 821), sponsored by Sen. Birch Bayh (D-Ind.), creates an omnibus federal program to address the problems of juvenile offenders. The bill was signed into law by President Ford on September 7.

Provisions of the Act which may affect the ability of the media to report on the juvenile justice system include:

•The title which creates a program providing emergency assistance to runaway youths, also provides that records which identify individual runaways "may under no circumstances be disclosed or transferred to any individual or to any public or private agency," including both the press and police departments.

•The law sets up the Office of Juvenile Justice and Delinquency Prevention to co-ordinate all federal programs concerned with juvenile delinquency. Records of the Office which identify individual juveniles are covered by the same blanket protection against disclosure as are those identifying runaway youths.

•The new Office will also allocate grants to state agencies which supervise local juvenile justice programs. In order to receive these grant, an individual state must establish procedures "for assuring...privacy with regards to records relating to services provided to any individual."

•There has long been a debate regarding how much secrecy is required to protect juveniles in court proceedings. For the first time, the new law establishes a uniform policy for all federal courts regarding juvenile court records. The law provides: "Throughout the juvenile delinquency proceeding the court shall safeguard the records from disclosure. Upon the completion of any juvenile delinquency proceeding whether or not there is an adjudication the district court shall order the entire file and record of such proceeding sealed." The records will be disclosed to other courts and to law enforcement agencies.

Addressing itself to the news media, the section also provides that "neither the name nor the picture of any juvenile shall be made public...in connection with a juvenile delinquency proceeding."

The section was based upon existing state laws and upon the recommendations of reports such as *Model Rules on Juvenile Courts*, written in 1969 by the Council of Judges for the National Council on Crime and Delinquency.

6. MASS SEALS EX-OFFENDER CRIMINAL RECORDS

In June, the Massachusetts state legislature passed a law allowing ex-offenders to have their Massachusetts criminal arrest, conviction and disposition records sealed 10 years after release for a misdemeanor and 15 years after release for a felony (H 6176). The law applies to persons with past criminal records who have not been found guilty of any criminal offense anywhere in the United States within the 10 years preceding the request.

7. FBI WON'T GIVE SOME ARREST RECORDS TO BANKS BUT LOCAL POLICE CAN OBTAIN THEM

Until July, it was standard FBI procedure to disclose all arrest records to federally chartered and insured banks and to state and local governmental agencies for purposes relating to licensing and employment.

On July 1, a new FBI policy limiting access to these arrest records went into effect. Under the new policy, the FBI will not disclose to the above mentioned groups any arrest record that is more than a year old unless the record includes the disposition of the case.

All arrest records, whether or not they include final dispositions, will continue to be available to authorized law enforcement agencies that seek them for law enforcement use.

8. JUSTICE DEPT SAYS LEAA PRIVACY REGS "ON HOLD"

Administrative regulations proposed by the Law Enforcement Assistance Administration severely restricting the dissemination to the media of public arrest information were published in February 1974. (See *PCN IV*, p. 34 and *PCN V*, p. 62).

The regulations, however, were not made effective last July as originally scheduled.

In November, a Justice Department spokesman said the proposed regulations remain "on hold," pending congressional action on proposed legislation to restrict dissemination of criminal justice information.

9. SUPREME COURT HEARS ARGUMENTS ON LAW BARRING PUBLICATION OF RAPE VICTIM'S NAME

In 1972, *WSB-TV* in Atlanta, Georgia televised a news report on the public trial of six youths charged with the rape-murder of a teenage girl. During the report, the victim was referred to by name (see *PCN IV*, p.3).

The victim's father sued *WSB-TV* for an invasion of his privacy, relying on a Georgia criminal statute which prohibits the broadcasting of "the name or identity of any female who may have been raped."

In 1973, the Supreme Court of Georgia upheld the statute as constitutional, and ruled that even without the statute, the father of the deceased girl had a claim against the broadcaster for invasion of privacy.

The case was appealed to the U.S. Supreme Court. Oral arguments were held on October 11.

10. WASH. D.C. COURT SAYS PRIVACY VIOLATED BY PUBLICATION OF RAPE VICTIM'S NAME

Last February, *The Washington Post* published an account of the rape and stabbing in nearby Prince George's County of two women, one of whom died. The newspaper printed the name and address of the victim who survived.

The victim, 21-year-old Norma Jean Hunter, and her father filed suit against the *Post*, claiming the publication constituted an invasion of Ms. Hunter's privacy. They are seeking $100,000 in damages.

Lawyers for the *Post* filed a motion in District of Columbia Superior Court seeking dismissal on the grounds that there is a constitutional privilege to publish truthful accounts of matters of public interest. A Superior Court judge ruled that the publication of Ms. Hunter's identity "was not newsworthy and not a matter of public interest." The public's interest in the case, the judge ruled, could have been satisfied without publication of her name and address.

The court ruled that the publication of the name and address "was of no essential part of any exposition of ideas, and of such slight social value that any benefit that might have been derived from it was outweighed by the social interest in order and morality."

The judge also said the "extreme embarrassment and harassment endured by rape victims" and the plaintiff's "young age" weighed in favor of protecting her privacy.

In an appeal filed in D.C. Court of Appeals, the *Post* argued that the First Amendment protects publication of all truthful facts concerning events of public interest. This, it maintained, barred Hunter from claiming the story invaded her right to privacy.

The newspaper also maintained that "neither willing nor unwilling actors in events of public interest" can sue for invasion of privacy based on accurate news reports of those events.

(See *PCN IV*, p. 3, and this *PCN* above for a similar holding of the Georgia Supreme Court in a case now before the U.S. Supreme Court.)

11. LAWSUIT TO EXPUNGE ARREST RECORD FILED BY ACLU

Twenty-three years ago, a husband and wife were arrested by the FBI in Los Angeles on charges of transporting stolen property across state lines. The man was convicted of a felony, but all charges against his wife were dropped.

In September, the woman filed suit in federal court seeking removal of her arrest record and fingerprints from the agency's nationwide computerized files. Alleging infringement of her constitutional rights under the First, Fourth, Fifth, Eighth and Ninth Amendments, "Jane Doe" claims that her employment opportunities are jeopardized and her life "continually overshadowed" by the possibility that the FBI will expose or distribute her arrest record. The case is being handled by the American Civil Liberties Union.

For a similar lawsuit filed in Virginia State court to expunge the record of a false arrest, (see *PCN V*, p. 65).

12. U.S. APPEALS COURT RULES INACCURATE FBI RECORDS MAY BE LIBELOUS & VIOLATE PRIVACY RIGHTS (See this *PCN*, p. 24)

13. FED. COURT ORDERS PUBLIC ARREST COURT RECORDS SEALED OF 13,000 MAYDAY ARRESTS

In May 1971, more than 13,000 people were arrested in Washington, D.C. during the week-long Mayday demonstrations. All but 300 were subsequently acquitted.

In April 1973, the U.S. Court of Appeals for the D.C. Circuit ruled on a class action suit to expunge records of their arrests.

The court held that arrests arising out of the demonstrations were unconstitutional because there was no probable cause for arrest and because proper arrest procedures were not followed.

The court further held that there was no "legitimate interest" in having the records of these illegal arrests open to the public, and remanded the case to the District Court for a determination of what specific remedy would be adequate to assure effective relief.

On September 4, 1974, U.S. District Court Judge Howard F. Corcoran, following the mandate of the 1973 decision, ordered the District of Columbia government to turn over to counsel for the plaintiffs "all records . . . that would in any way relate" to the illegal arrest. This includes all reports, memoranda, fingerprint records, photographs, and court records that involve the arrests.

The D.C. government was also ordered to notify any government or private agency that received such records from it that they must turn those records over to plaintiff's counsel.

The D.C. government plans to appeal the order.

14. ALABAMA COURT OPENS SEALED ARREST

In November 1972, The *Birmingham News* filed suit in state court to force the Chief of Police of Mountain Brook, Alabama, to give the newspaper access to police "Complaint Reports" withheld from the press by the Chief.

Three months later in January, 1973, the Mountain Brook City Council passed a city ordinance directing the Chief to keep the reports confidential and for official use only. The ordinance, however, gave the Chief discretionary authority to release some reports deemed "in the best interests of the city."

An Alabama state judge cited First Amendment grounds in October to allow the *Birmingham News* access to the reports. The court, however, gave the Chief discretion to bar disclosure of files which would "impede the police in the apprehension of suspects or otherwise interfere with law enforcement."

15. HOUSTON CHRONICLE DENIED ACCESS TO ARREST RECORDS DESPITE COURT RULING

On April 4, 1974, the Texas state attorney general issued an opinion interpreting the 1973 Texas Open Records Act.

The opinion stated that under the Act, the Houston police department had the option to make offense reports available to news media, but was under no compulsion to do so. (An offense report is filed by a police officer after an offense has been reported and a preliminary investigation has been made). The opinion made no mention of individual prior arrest records.

In June, the *Houston Chronicle* sought an injunction in state court against the police department's practice of selectively denying the news media access to both formal arrest records and offense reports. The *Chronicle* asserted that historically it had unrestrained access to both the records and the reports.

In August, the Court held that the Open Records Act did not provide a basis for a refusal of access to the records, but in effect, the Court dismissed the argument that any denial of access is impermissible under the First Amendment.

The media is still being denied access to the arrest records and offense reports. The police contend that although the Open Records Act provides no basis for the denial, they may deny access because it involves an unjustified invasion of privacy. The *Chronicle* plans to appeal.

PRIVACY SUIT RAISES PRESS ACCESS QUESTION 16.

In 1967, a bridge collapsed at Point Pleasant, W. Va., killing 44 persons including Melvin Cantrell. Eight months later, reporter Joseph Eszterhas of the *Cleveland Plain Dealer* walked up a rural road to the home of the Cantrell family, and finding Mrs. Cantrell absent, interviewed several of the children who were being watched by a baby sitter.

He then wrote a story which, it is conceeded, accurately portrayed the economic and social privation of the family which lived in a run-down shack with only bare living necessities.

The story contained several minor factual errors: the date of the accident was off by one day; the description of Mr. Cantrell's coffin was wrong; the name of one child was wrong; and Mr. Cantrell's previous employment was wrong. The story implied that Mrs. Cantrell was present during the interview when she was not.

Mrs. Cantrell sued for invasion of privacy claiming that she and her family were not public figures due to the accident and that the newspaper invaded her privacy by spreading her unfortunate private living conditions on its pages. She and one of the children won a $60,000 damage judgment.

The West Virginia Supreme Court reversed the judgment and the Cantrell's appealed to the U.S. Supreme Court which heard oral arguments in the case in October. The main issue in the case is whether persons such as the Cantrell's—who are connected to events of public interest—have a zone of privacy against media reportage; and if so, how far the zone extends.

OKLAHOMA COURT VOIDS CHALLENGE TO PUBLICATION BAN OF NAMES OF DEAD VETS 17.

(See this *PCN*, p. 12)

Privacy & Libel

Libel

18. SUPREME COURT LETS STAND RULING THAT NASA SCIENTIST IS PUBLIC FIGURE

Dr. William Ross Adey, an internationally recognized neurologist, supervised for NASA in 1969 the heavily publicized weightlessness experiment in which a 14-pound monkey nicknamed "Bonny, the Space Monkey" was launched into earth orbit. The trip was cut short when Bonny's physical condition suddenly deteriorated. The monkey died soon after its return to earth.

Shortly after the Bonny flight, United Action for Animals, a humane society, published a report strongly criticizing the experiment. The report criticized Dr. Adey's role in the experiment and alleged that the scientist had "a long history of abuse of animals" and that he had "performed a wide variety of exceedingly cruel animal experiments."

Dr. Adey brought a libel suit against the organization and two of its officers who prepared the report.

A federal court judge in New York heard the case without a jury and in June 1973, held for the humane society. Judge Edward Weinfeld found Dr. Adey was a public official and ruled that he had failed to demonstrate "reckless disregard for the truth" as required by *New York Times v. Sullivan*. "Men in public life, whether they be judges, legislators, executives or scientists, must accept as an incident of their service harsh criticism, ofttimes unfair and unjustified—at times false and defamatory," he stated.

Dr. Adey appealed, but the U.S. Court of Appeals for the Second Circuit affirmed without opinion.

In October, the Supreme Court let the decision stand, refusing to decide whether its opinion last summer relaxing the libel standard for suits by private individuals, should apply to Dr. Adey's case (that Supreme Court decision, *Gertz v. Robert Welch, Inc.*, is discussed in *PCN V*, p. 6).

19. SUPREME COURT REBUFFS STEPIN FETCHIT LIBEL SUIT AGAINST CBS

In 1968, *CBS* televised a documentary on black cultural history. During the program, Lincoln Theodore Perry, a black actor who in the 1930s used the name Stepin Fetchit, was characterised as having popularized "the tradition of the lazy, stupid, crap-shooting, chicken-stealing idiot."

Later in 1968, Perry filed a libel and invasion of privacy suit against *CBS*, claiming that the documentary was a "baseless commentary" that held him up "to hatred, contempt or ridicule." Perry alleged that the statement in the program was blatantly false, and therefore defamed his reputation.

The District Court granted a summary judgement for *CBS*, holding that network is "entitled to the privilege of fair comment because [Perry] is a public figure." The Court further held that there was no evidence of actual malice under the *New York Times v. Sullivan* rule.

In March 1974, the U.S. Circuit Court of Appeals for the Seventh Circuit affirmed the ruling of the District Court.

On October 15, the Supreme Court declined to hear the case.

20. NEGROES AND JEWS LIBEL CASE GOES BACK FOR NEW HEARING ON SUPREME COURT ACTION

A book published three years ago, "The Negroes and the Jews," included a prologue that juxtaposed the stories of a Jewish merchant in Philadelphia, Max Gordon, with that of "Earl," an anonymous black in Harlem who was quoted as saying that Jewish businessmen cheat blacks.

Gordon, who had called the *Philadelphia Inquirer* in 1964 to recount his experiences during the riot that year, filed a $500,000 libel suit against the book's publisher, Random House, Inc. He claimed he was libeled by an implication in the prologue that he was a dishonest merchant who cheated blacks.

A U.S. District Court judge dismissed the complaint, but the U.S. Court of Appeals for the Third Circuit reversed. Random House appealed to the U.S. Supreme Court (see *PCN V*, p. 11).

In October, the Supreme Court, granting review, returned the case to the Court of Appeals for further consideration in light of changes made in libel law by the Supreme Court's *Gertz* decision (see *PCN V* pp. 6-7).

21. W. VA. GUBERNATORIAL CANDIDATE WINS LIBEL ACTION; CHARLESTON DAILY MAIL APPEALS

In 1968, James M. Sprouse was the Democratic gubernatorial candidate in West Virginia.

In October of that year, the *Charleston Daily Mail* published several stories concerning Sprouse's holdings in a land development corporation. The articles alleged that Sprouse stood to make large profits from land deals that were made by the corporation before it could legally do business in West Virginia.

In 1969, Sprouse filed a libel action against the *Daily Mail*. Although he admitted that for the most part, the contents of the October 1968 articles were true, he charged that certain headlines and pictures were misleading and libelous.

In July 1973, the case came to trial in the state court and the jury found for Sprouse, awarding him a total of $750,000 in damages. The newspaper's motions for a directed verdict or a new trial were denied by the trial judge.

The *Daily Mail* has an appeal pending before the West Virginia Supreme Court of Appeals.

22. **REBOZO LIBEL SUIT AGAINST WASHINGTON POST STILL PENDING IN APPEALS COURT**

Charles G. (Bebe) Rebozo, Florida businessman and close friend of former President Nixon, filed a $10 million libel suit against *The Washington Post*, contending that an October 25, 1973 *Post* story was published "in reckless disregard of the truth." The story, by reporter Robert Kessler, stated that there was evidence that Reobozo cashed $91,500 in stocks in 1968 after being informed that the stocks were stolen (see *PCN IV*, p. 6 & *PCN V*, p.12)

The *Post* said the information came from a sworn deposition of an insurance investigator and therefore even if false, was not published recklessly.

A federal district judge in Florida denied a *Post* motion to dismiss the case. The *Post* is currently appealing the denial of the motion to the Fifth Circuit Court of Appeals.

OTHER LIBEL CASES OF NOTE:

23. California criminal libel: L.A. Star (See this *PCN*, p. 31)
24. Indiana trade libel: ABC news (See this *PCN*, p. 7)
25. Army-Times: libel-injunction (See this *PCN*, p. 7)
26. Ohio University Post: official libel (See this *PCN*, p. 75)
27. R. Woodward: $281,000 libel judgment (See this *PCN*, p. 34)
28. CBS libel: NBC & ABC subpoenaed (See this *PCN*, p. 38)
29. B. Hume: J. Anderson: libel to trial (See this *PCN*, p. 35)

30. **NBC DELETES WORD "CREST" FROM BROADCAST; CITES POSSIBLE TRADE LIBEL**

On July 4, 1972, *NBC* deleted the word "Crest" from a Johnny Carson joke about excessive lead in toothpaste tubes.

Later that year, a complaint was filed with the Federal Communications Commission by the National Citizens Committee for Broadcasting. The Committee alleged that *NBC*'s action violated the First Amendment, since it amounted to prior restraint and censorship.

The Committee also charged that *NBC* made the deletion in order to protect a commercial sponsor.

In response, *NBC* stated that it deleted the comment because it had been advised by counsel that the statement was "very possibly defamatory in that no hard evidence was at hand to back up the contention that Crest contained lead."

On August 28, 1974, the Commission dismissed the complaint. It ruled that a licensee could "establish standards governing the acceptability of broadcast material" and was "free to exercise its discretion in deleting portions of programs" because they do not meet those standards.

The Commission also stated that absent extrinsic evidence of a policy inconsistent with the public interest, it will not seek to establish by inference the true motives behind a programming decision.

VI RIGHT OF REPLY/ACCESS TO THE MEDIA

Right of Reply

1. McCLELLAN RIGHT-TO-REPLY BILL MOOTED BY TORNILLO DECISION

In early February, Sen. John L. McClellan (D-Ark.) called for a federal law that would compel newspapers to give political candidates the right to reply to critical articles and editorials. Prompted by the Supreme Court's agreement to hear *Miami Herald v. Tornillo*, McClellan said that if the constitutionality of the Florida right to reply law in that case were upheld, the Senate could enact a similar national law (See *PCN IV*, p. 2).

The Court's unanimous ruling struck down the Florida statute (see *PCN V*, p. 1). McClellan's office said that, as a result of *Tornillo*, the Senator will not introduce his proposed legislation.

2. NJ. LEGISLATURE PASSES BILL FOR MANDATORY CRIME ADS; GOVERNOR VETOES

Early in 1974, New Jersey State Senator William Musto (D-Union City) introduced legislation which would have required a newspaper to publish a notice of the acquittal or dismissal of charges against a defendant, if the defendant so requested. S-91 provided that the notices (1) would be placed in any two general circulation newspapers of the defendant's choice, (2) would run for three consecutive days "as far forward of the first page of commercial advertising as possible," and (3) would be paid for with public funds.

The New Jersey Press Association opposed the bill, stating that "such legislation represents a governmental decision concerning the adequacy of news coverage and comment in matters of public interest and represents a dangerous precedent forecasting possible future incursions into matters of editorial judgement."

Both houses of the state legislature passed the bill, but on October 21, Gov. Brendan Byrne vetoed the measure. Citing *Miami Herald v. Tornillo*, Byrne said: "As a free press is at the heart of a strong democracy, no newspaper should be mandated to publish any material, even as an advertisement.

3. CHICAGO SUN-TIMES ADOPTS FAIRNESS CODE; GUILD UNSURE OF EFFECT ON REPORTERS

In an effort to buttress his newspapers' credibility with their readers, Marshall Field, publisher of the *Chicago Sun-Times* and the *Chicago Daily News*, announced a program in October aimed at developing "further mutual trust" by introducing procedures to insure fairness and accuracy.

The program includes daily printed advertisements encouraging readers to call attention to errors of reporting in the newpaper, establishes a "Bureau of Fairness and Accuracy" manned by senior editors to investigate complaints of unfairness and adopts a Code of Professional Standards to be followed by both newspapers and their employees.

American Newspaper Guild members are concerned with the "potentiality for friction" as a result of the Field code and the local Chicago Guild unit is studying it according to James M. Cesnik, American Newspaper Guild Director for Research and Information. The code will not interfere with Guild contracts at the Field newspapers, according to Cesnick, because the terms were unilaterally imposed by Field.

4. NATIONAL GEOGRAPHIC ISSUES FIRST RETRACTION AFTER JEWISH PICKETING

In April 1974, *National Geographic* magazine printed an article by Robert Azzi about the city of Damascus, Syria. In that article, Azzi reported that Syria was tolerant of its Jewish minority.

This article brought strong criticism and a picket line from the American Jewish Congress, which said that Syrian Jews are in fact subjected to persecution and harassment by the Syrians.

In its November issue, *National Geographic* printed its first admission of error in its 86 year history. Gilbert M. Grosvenor, the magazine's news editor, admitted that the Azzi article "failed to reflect the true situation" of Syrian Jews.

5. RABBI KORFF STARTS MEDIA MONITORING CAMPAIGN

One of former President Nixon's staunchest supporters throughout the Watergate affair has initiated a campaign to impose restrictions upon the press. Rabbi Baruch Korff, who is also chairman of the National Committee for Fairness to the President, formed the United States Citizens' Congress shortly after Nixon's resignation and said that the new organization will "send the leftists and liberals of the news media to hell."

Saying that the press demeaned the presidency in its "persecution" of Nixon, Korff's new group urged Congress to investigate the media's role "in shaping and steering political events, with particular reference to the controversies of the last two years." To date, the Citizens' Congress has presented no substantive program of its own.

6. ST. LOUIS POST-DISPATCH RUNS CIGARETTE ADS, SAYS AD BAN NOT EFFECTIVE

On January 1, 1971, the St. Louis *Post-Dispatch* discontinued all cigarette advertising, citing U.S. Public Health Service reports that cigarette smoking is related to cancer. On October 11 of this year, the paper announced it would resume accepting the ads.

Similar reversals of newspaper bans on cigarette advertising were made by the *Toledo* (Ohio) *Blade* in December 1973, the *Trenton* (N.J.) *Times* in January and *The Boston Globe* in May (see *PCN V*, p. 3). In explaining its reversal, the *Globe* stated that it had not been concerned with lost ad revenues but rather had questioned whether the paper "has the right to censor from its pages any legal industry."

The decision of the *Post-Dispatch*, said advertising manager James Cherry, was made because the ban had not been effective. Cigarette sales in the St. Louis area have increased since 1971.

7. NOTE: CIGARETTE AD BAN ROUND-UP

The only large (more than 50,000 daily circulation) newspapers which still do not accept cigarette advertising are the *Christian Science Monitor* and the Salt Lake City *Deseret News*. The advertising policies of these papers are based upon their religious affiliations.

Other smaller papers which, according to the Tobacco Institute, have banned cigarette advertising within the last six years include: New London (Conn.) *Day*; Monterey (Calif.) *Peninsula-Herald*; Bluffton (Ind.) *News-Banner*; Kendallville (Ind.) *News-Sun*; Coffeyville (Kansas) *Journal*; Worthington (Minn.) *Globe*; Kirksville (Mo.) *Express & News*; Billings (Mont.) *Gazette*; Helena (Mont.) *Independent Record*; Lovington (N.M.) *Leader*; Troy (Ohio) *News*; Beaver (Pa.) *County Times*; Bethlehem (Pa.) *Globe-Times*; New Kensington (Pa.) *Dispatch*; Tarentum (Pa.) *News*.

It is not known how many of these bans are still in effect.

8. NEW YORK WEEKLY BANS PRO-ABORTION STORIES AND ADS

Elmer J. Spear, publisher of the *Orange County Post* in Washingtonville, N.Y., announced a new editorial policy to refuse both advertisements and news stories about political candidates who favor abortion. He estimated that the 2,000 circulation weekly would lose $2,000 in advertising alone during the last month of the 1974 election campaign, but editorialized that, as a Catholic, he could not act differently. The result of the policy will be that news space for the local congressional race will be given only to the candidate of the Conservative Party in which Spear also is registered.

9. MEDIA TREATMENT OF WOMEN CRITICIZED

NOTE: Complaints by women's and civil rights organizations about sex bias and stereotyping in the media are being heard with increasing frequency.

The regulated media were the first targets of the criticism. Women's organizations have unsuccessfully urged the Federal Trade Commission in advertising, and the Federal Communications Commission in broadcasting, to act against sex bias.

More recently, textbooks and other instructional materials have been a primary focus of the controversy about sexism in the media. Two recent developments in the textbook area discussed below have implications for all the media, which can expect further efforts by women's organizations to change the way women are portrayed in print and on radio and TV.

10. McGRAW-HILL URGES EMPLOYEES TO RID THEIR WRITING OF SEXISM

In September, the McGraw-Hill Book Company issued a booklet to its employees entitled *Guidelines for Equal Treatment of the Sexes in McGraw-Hill Company Publications*. The Guidelines give examples of language and stereotypes to be avoided as sexist in company publications and offer examples of substitutes.

Offered to employees in the form of recommendations to make them "aware of the way in which males and females have been stereotyped in publications...and to indicate positive approaches toward providing fair, accurate, and balanced treatment of both sexes in our publications," the Guidelines state that since "the language of literature cannot be prescribed," the recommendations are directed primarily toward textbooks and other nonfiction works.

An Illinois textbook publisher, Scott, Foresman and Company, has issued a similar set of guidelines.

11. FEMINISTS HIT EXEMPTION FOR TEXTBOOKS IN HEW SEX BIAS REGS; FIRST AMENDMENT ISSUE RAISED

On June 18, Secretary of Health, Education and Welfare Caspar W. Weinberger issued long awaited proposed government guidelines to end sex discrimination in education. The guidelines were issued under Title 9 of the Omnibus Education Act of 1972, which prohibits sex discrimination in federally aided schools and universities. Contrary to the urging of various women's organizations, the guidelines exempted textbooks.

Weinberger stated a primary reason for the decision not to ban the use of discriminatory curriculum materials was concern that any such action "would raise grave constitutional issues under the First Amendment." He

also expressed the opinion that professional educators should have the main responsibility in this area.

The textbook exemption was strongly criticized by a number of women's and education groups.

Betty Friedan, of the NOW Legal Defense and Education Fund, accused HEW of "hiding behind the First Amendment." She argued that HEW guidelines on sex bias in textbooks would not mean any new government involvement since there already is "state action" in the routine practice whereby federally aided school boards choose textbooks.

Because of the large number of public comments HEW has received, the proposed guidelines are not expected to be given binding effect until well into 1975.

Antitrust

12. S.C. DAILY FILES ANTI-TRUST SUIT AGAINST NEW COMPETITOR

The two dailies in Columbia, S.C., the *State* and the *Record*, are owned by the State-Record Company and have the largest combined newspaper circulation in the state. In September 1973, the corporation bought three non-daily newspapers in Horry County, S.C., the Myrtle Beach *Sun-News*, the Conway *Field & Herald* and the *Loris Sentinel*. Two months after its acquisition, though, the *Sun-News* was made into a daily.

The purchase gave the State-Record Company control of all but two newspapers in Horry County, a small weekly in North Myrtle Beach, and the Myrtle Beach *Journal American*, which became a daily in June 1973.

This September, the *Journal American* filed an antitrust action in U.S. Federal Court against the State-Record Company and the Sun Publishing Company. The State-Record Company transformed the *Sun-News* into a daily, says the *Journal American*, even though a feasibility study conducted by the corporation had indicated that only one daily could survive in Myrtle Beach. The suit charges that the "predatory" purpose of the acquisition of the three papers and the transformation of the *Sun-News* was to put the *Journal American* out of business, "thereby eliminating competition and creating a monopoly in Horry County."

Anticompetitive acts allegedly practiced by the defendants include: (1) refusing to accept advertising from merchants who also advertise in the *Journal American*; (2) requiring businessmen who advertise in the *State* and *Record* to buy space in the *Sun-News* as well; (3) establishing combination advertising rates between the *State* and *Record*, and the *Sun-News* and, in addition, selling ad space at even lower rates to selected advertisers; and (4) operating the *Sun-News* at a substantial loss and continuing its publication only through advances made by the State-Record Company.

Claiming that these monopolistic practices violate the Sherman and Clayton antitrust acts and make it impossible for the *Journal American* to compete, the paper asked for $9 million in damages. In addition, the suit asks the State-Record Company both to divest itself of its Horry County papers and to sell either one of its two original properties, the *State* or the *Record*. It also asks the *Sun-News* to revert to tri-weekly publication.

The defendants have been given until late November to respond to the charges. Pending the outcome of the suit, says publisher John Sumner, the *Journal American* will publish only twice weekly effective November 24.

13. NEWSPAPER PRESERVATION ACT—BACKGROUND

Since 1933, forty-four newspapers in 22 cities have entered into joint operating agreements. Under these agreements, two competing newspapers combine printing, circulation, advertising and other business functions while maintaining separate and independent editorial staffs.

In 1965, the Antitrust Division of the Justice Department filed a test suit against the business merger in Tucson, Arizona, alleging that several provisions of the agreement violated the Sherman Antitrust Act. On March 10, 1969, the Supreme Court ruled for the government in that case, *Citizen Publishing Company v. U.S.*

In 1970, Congress passed, and President Nixon signed, the Newspaper Preservation Act. The law, which reversed the *Citizen* decision, grants antitrust immunity to the practices of *existing* joint agreements which had been ruled unconstitutional—including price-fixing, profit pooling and market control—and gave protection against all lawsuits in which it is alleged that any newly-sanctioned joint operating agreement is unlawful under any antitrust law.

Newspapers operating jointly are not completely invulnerable to antitrust action, though. Their immunity does not cover "any predatory practice which would be unlawful under any antitrust law if engaged in by a single entity."

The statute also allows *other* papers to form new joint operating agreements upon prior written consent of the Attorney General, who must determine that at least one newspaper seeking the exemption is failing and would go out of business if denied the benefits of an operating agreement.

14. BAY GUARDIAN LOSES SUIT CHALLENGING PRESERVATION ACT

On June 30, 1970, less than one week after the Act was signed, Bruce Brugmann of the San Francisco *Bay Guardian* filed suit in U.S. District Court against a

five-year-old agreement between two San Francisco dailies, the *Chronicle* and the *Examiner*.

Brugmann alleged that the original merger violated antitrust law and that subsequent Congressional approval was unconstitutional. The newly-sanctioned agreement had weakened or eliminated the remaining competitors, said Brugmann, and the quality of news and editorial reportage had declined markedly at both jointly-operated publications.

In a 1972 decision, the District Court ruled that the Newspaper Preservation Act does not violate the First Amendment. "Rather, it is merely a selective repeal of antitrust laws and loosens the same shady market forces which existed before the passage of...antitrust laws."

Responding to Brugmann's criticism of Congress, the Court said that "it may be that Congress could have adopted a less heavy-handed piece of legislation...but this Court does not sit as a super-legislature to reevaluate the financial and other data upon which Congress made its decision."

Brugmann is appealing the decision.

15. COURT STRIKES DOWN JUSTICE DEPARTMENT RULE ON NEWSPAPER PRESERVATION ACT

Although the Newspaper Preservation Act was signed in 1970, no two newspapers could form a new joint operating agreement until the Justice Department issued its rules for administering the law.

In November 1971, sixteen months after the law was enacted, Justice published a set of proposed administrative rules and invited criticisms from outside organizations, agencies, and corporations.

One proposed regulation stated: "The Newspaper Preservation Act does not require that all joint newspaper operating arrangements obtain the prior written consent of the Attorney General." The provision was included because, according to the Justice Department, a strict interpretation of the law "would makeunlawful certain types of arrangements between newspapers that do not and have never thought to violate the antitrust exemption" merely because they cannot pass the tests set forth in the rest of the statute.

Guild Suit

The American Newspaper Guild opposed the provision. Citing the law's language which requires newspapers forming new joint operating agreements to obtain the prior written consent of the Attorney General, the Guild said that the proposed rule directly contradicted the Act.

On January 2, 1974, the Justice Department issued interim rules which retained the provision. On February 19, the Newpaper Guild filed suit in U.S. District Court, asking it to void the regulation and enjoin the department from implementing it. "Once joint newspaper operating arrangements have been entered into, it is difficult if not impossible to undo them and reconstruct the facilities and plant of the newspaper which is a party to such arrangements."

On July 23, the court ruled for the Guild, saying that the law's language was "clear and unambiguous" and does not allow Justice to make the Attorney General's consent optional. "It is reasonable to assume, " said the court, "that Congress intended prior consent for all future arrangements to be mandatory, thus avoiding complex litigation and economic disruption and also assuring that the antitrust exemption would be kept narrow and closely enforced."

The Justice Department filed a motion for rehearing, claiming that the court order was made on the belief that joint operating agreements between non-competing newspapers do not exist when in fact many separately owned, non-competing newspapers enter into joint printing operations.

Acknowledging that concern, the court modified its ruling to read that "if two papers use an independent printing establishment with no arrangement between the papers, than no joint newspaper operating arrangement would appear to have been established."

At the same time, the court denied the motion for rehearings and said that if its interpretation of July 23 "is not what the Congress meant, then the proper course...is to seek Congressional clarification or amendments."

16. TWO ALASKA NEWSPAPERS PETITION TO FORM NEW JOINT OPERATING AGREEMENT

In early September, the Justice Department announced that two competing newspapers in Anchorage, Alaska, had asked the department for permission to enter into a joint operating agreement under the Newspaper Preservation Act.

The applicants were the first to file since the administrative rules went into effect on January 2, 1974.

The Anchorage *News* (circulation 16,000) said that it had lost money for five consecutive years and was in danger of failing unless it combined business operations with the Anchorage *Times* (circulation 41,000). Under the arrangement, the *Times*, which described itself as a "successful, profitable enterprise," would supervise the merged business departments and realize a larger share of the profits. (Both papers asked Justice not to disclose the financial figures used to support their claims. The request from the *News* was denied, but the *Times*' records are still secret.)

Editorial Discretion Threatened

On October 9, the Antitrust Division of the Justice Department recommended conditional approval of the proposed arrangements in a report to Attorney General William Saxbe.

One provision of the proposed agreement stated that the newspapers will "maintain as far as practicable the present quality, character and reputation" of their publications.

The Antitrust Division said that the provision limited the papers' discretion to make editiorial changes and imposes "an impermissible restriction on their right to determine independently their news...policies." This provision, said the division, violated the law's intent to preserve complete editorial independence between the two papers and should be removed before the agreement was approved. The papers agreed to delete the provision on November 4.

No decision has been made by the Attorney General.

VII THE BROADCAST MEDIA

Fairness Doctrine

1. NBC WINS REVERSAL OF FCC 'PENSION' FAIRNESS RULING

Acting on a complaint by Accuracy in Media, a media watchdog which claims that many newspapers and broadcasters give a liberal slant to the news, the Federal Communications Commission ruled on Dec. 3, 1973, that an *NBC* documentary on pensions violated the FCC's fairness doctrine. The Commission found that the 1972 documentary "Pensions: The Broken Promise" gave "overwhelming weight" to criticism of pension funds and neglected their "positive aspects." *NBC* was ordered to give more broadcast time to "pro-pensions" views. (See *PCN IV*, p. 40).

NBC appealed, supported by *CBS*, *The New York Times*, the Radio-Television News Directors Association, Sigma Delta Chi and the National Association of Broadcasters as friends-of-the-court. *NBC* contended that the FCC decision went beyond the Commission's powers, misapplied the fairness doctrine and violated the first Amendment. Both sides argued the case as a major test of the meaning of the fairness doctrine.

On September 27, the U.S. Court of Appeals for the District of Columbia overturned the FCC decision by a 2-to-1 vote. The court found the FCC "Pensions" ruling misapplied the fairness doctrine by overruling *NBC*'s good faith editorial judgment. The court's opinion, by Judge Harold Leventhal, stated that the fairness doctrine did not authorize the FCC to challenge editorial judgment, unless the Commission "sustains a heavy burden and makes a clear showing that the licensee has been unreasonable, that there has been an abuse of journalistic discretion rather than an exercise of that discretion."

Particularly in the area of investigative journalism, the court said, broadcasters must be given wide latitude to determine for themselves whether their programs are fair. Judge Leventhal wrote, "Investigative reporting has a distinctive role of uncovering and exposing abuses." "It would be undermined," he added, "if a government agency were free to review the editorial judgments involved in selection of theme and materials."

In a dissent, Judge Edward Tamm contended the majority's opinion freed broadcasters to engage in propaganda at the expense of the public's right to know all sides of an issue. The court's position, he alleged, "means that a telecaster's presentation under the label of investigative reporting of a few factual bones covered with the corpulent flesh of opinion and comment fulfills the obligation of the network to give a fair picture to the public and to assist the public in knowing the facts essential to a determination of basic policies." "The majority opinion fails to recognize that as a practical matter there is no real distinction between this type of so called investigative reporting and propaganda."

The FCC has not yet announced whether it will appeal the decision.

2. FCC DEFENDS FAIRNESS DOCTRINE

On July 12, the Federal Communications Commission issued a long-awaited report formally terminating a three-year inquiry into the efficacy of the fairness doctrine.

Responding to numerous written comments and to views expressed at a public hearing in 1972—many of them critical—the FCC report left the fairness doctrine essentially unchanged, reaffirming "its basic validity and soundness."

Based upon the general "public interest" standard of the Communications Act, the fairness doctrine requires broadcasters to present contrasting views in their coverage of controversial issues. The FCC report reaffirmed that "the doctrine does not require balance in individual programs or series of programs, but only in a station's overall programming."

The report is primarily of interest for its attempt to clarify the Commission's position regarding the application of the fairness doctrine to advertisements.

With one exception, the Commission rejected the view that broadcasters should be required to air "counter-commercials."

The report said the fairness doctrine would continue to apply to "overt editorial advertisements" obviously advocating a point of view on controversial issues. But it said that no fairness obligations would be triggered by ads bearing only a "tenuous relationship" to a current, publicly-acknowledged controversy.

Conceding that this line may sometimes be difficult to draw, the Commission said it would accept a licensee's reasonable good faith judgment on whether an ad addresses a controversial issue.

Rejecting the recommendations of many consumer groups and a proposal by the Federal Trade Commission, the FCC refused to extend the fairness doctrine to product commercials.

Mandatory product "counter-commercials," the Commission said, would have "a predictable adverse economic effect on broadcasting." The Commission also expressed the view that the fairness doctrine is an inappropriate vehicle for the correction of false and misleading advertising.

3. FCC REJECTS CHARGE OF BIAS IN BOSTON TV STATION'S STATE CAMPAIGN COVERAGE

Last summer, Boston station *WCVB-TV* announced it would cover all contested state primary election except State Treasurer. It said the station's format permitted coverage only of the most newsworthy contests.

Former Massachusetts Governor Foster Furcolo complained to the Federal Communications Commission that the *WCVB-TV* policy was an act of intentional discrimination against his son, Charles Furcolo, Democratic candidate for state treasurer.

Furcolo stated that the candidate could not afford to buy advertising time and should be provided free coverage just as other state primary candidates were receiving.

On August 29, the FCC's Broadcast Bureau rejected Furcolo's complaint on the ground that there was no evidence that the station's decision against covering all campaigns was unreasonable.

The Bureau said that although broadcasters have a responsibility to devote some time to matters of public interest such as political campaigns, the selection of specific programming "is left to the judgment of the licensee."

4. 291 DAY INJUNCTION AGAINST ABC NEWS ENDS IN SETTLEMENT; ABC ABANDONS APPEAL (See this *PCN*, p. 7)

5. SHELL OIL CHECKS UP ON STATIONS AIRING ANTI-OIL AIDS

The Public Media Center, a California non-profit advertising agency which produced a series of radio commercials criticizing the oil industry for its high profits, provided Shell Oil Company with a list of the 700 radio stations that had requested the ads. Shell officials then called several of the stations to learn how the ads were being used. (See *PCN V*, p. 82 for story on Mobil Oil's reaction to two broadcast networks' policy refusing their ads.)

6. PRO MILITARY GROUP SAYS IT MAY SUE CBS FOR FAILING TO AIR RED ARMY THREAT

On October 23, the Institute for American Strategy announced the completion of a two-year study on reporting policies of *CBS-TV News* on national defense issues. Titled *TV and National Defense: An Analysis of CBS-News, 1972-73*, the report was based on video tapes of evening news broadcasts stored at the Television News Archives of Vanderbilt University Libraries (see related story, this **PCN**, p. 77).

The report found that during the two years of the study, *CBS*: (1) devoted one minute "to the comparative U.S.-U.S.S.R. military situation"; (2) carried almost no information on growing Soviet military might; (3) directed much critical reporting against U.S. military involvement in Vietnam; and (4) "was an active advocate...of a position that implied or called for a lesser commitment to American allies and lower defense expenditures."

Upon the report's release, IAS President John Fisher wrote to Richard Salant, President of *CBS*, saying that the report may be used as the basis of legal suits against *CBS* affiliates: "We will send copies to the managers of all *CBS*-affiliated TV stations...After all, it is their licenses which may be jeopardized if *CBS-News* fails to provide them with balanced programming."

Salant responded by saying that the Institute for American Strategy itself was open to charges of bias, since Fisher had discussed his conclusions of network bias several months before the study was completed.

7. T.V. NETWORKS CRITIZED FOR NOT TELEVISING ROCKEFELLER HEARINGS

Sen. Hugh Scott (R-Pa.) criticized the three major television networks for not carrying live the congressional hearings on the confirmation of Nelson A. Rockefeller as Vice President. Scott said that "economic considerations" had overridden news judgment.

On September 24, Richard S. Salant, president of CBS, responded that the decision was made "solely on the basis of consideration of news value." Salant said that much of Rockefeller's life was already well known and that little opposition to his confirmation had developed.

8. NEW MEDIA MONITOR GROUP STARTS (See this *PCN*, p. 57)

9. JUSTICES DOUGLAS & STEWART CRITICIZE TV FAIRNESS DOCTRINE RESTRAINTS

In recent speeches, both Supreme Court Justices Potter Stewart and William O. Douglas spoke against the power given to the Federal Communications Commission to require strict adherence to the "fairness doctrine."

Douglas stated that the advent of cable television has weakened the government's rationale for controlling radio and television. Douglas said that "we need to rethink the TV and radio problems" because he opposes "any intermeddling of government...with the press."

Stewart said that television networks should be allowed to be "abusive....arrogant and hypocritical" without suffering from government control, a concept that seems to be in conflict with the "fairness doctrine."

For further information on both of these speeches, see this **PCN**, p. 23.

10. PROXMIRE RENEWS ATTACK ON FAIRNESS DOCTRINE

Continuing his campaign for abolition of the fairness doctrine (see *PCN V*, p. 81), Sen. William Proxmire (D-Wisc.) gave a series of speeches this fall contending the doctrine runs contrary to the First Amendment.

In a Senate speech September 25, Proxmire declared the broadcast media are equally entitled as the print media to freedom from government control.

Unlike radio and TV, he said, "No newspaper has had to answer to a government agency because of complaints from readers."

He said the doctrine is likely to "affect the way broadcast newsmen do their jobs," since the FCC has the power, although it is rarely used, to take away licenses for fairness violations.

In another speech in October, Proxmire quoted from a 1967 article criticizing the fairness doctrine, written by FCC Commissioner Glen Robinson. According to Proxmire, Robinson's views have not changed.

Equal Time

11. NJ. PUBLIC TV GIVES FREE TIME

The New Jersey Public Broadcasting Network offered 30 minutes of prime-time television to each of 58 candidates running for the state's congressional seats.

12. FCC RULES ON REASONABLE ACCESS

In addition to requiring broadcasters to guarantee equal air time to all candidates for the same office, the Federal Communications Act obligates broadcast stations to provide "reasonable access time" to political candidates (section 312 [a.7]). In a September decision, the Federal Communications Commission ruled that the access provision does not give a candidate the right to dictate the length and placement of that time. The decision was made when the FCC rejected a complaint from Pete Flaherty, the Pittsburgh mayor running as the Democratic nominee for the U.S. Senate.

License Renewal

13. HOUSE AND SENATE PASS DIFFERENT VERSIONS OF OMNIBUS BROADCAST LICENSE BILL

On May 1, the House of Representatives passed the Broadcast License Renewal Act (H.R. 12993) on a 369-14 vote (see *PCN V*, p. 83). The Senate passed its version of the bill October 8 by a 69-2 margin. The bill now goes to conference. Major provisions of the legislation include:

- EXTENSION OF LICENSE PERIODS: Both houses would extend broadcast license periods from the current three years to five years.

- CROSS-OWNERSHIP: The House version forbids any FCC consideration of cross-ownership as a license renewal factor. The Senate bill directs to the FCC to complete its study of proposed rules on multimedia ownership.

The Federal Communications Act is silent on this specific point. However, the FCC is leaning towards outlawing cross-ownership in those few, mostly rural markets where on media company owns the only daily newspaper and the only local broadcast station (see *PCN V*, p. 75 and this **PCN**, p. 65).

- STANDARDS FOR LICENSE RENEWAL: Current FCC law allows an applicant for a broadcast license to successfully challenge the current holder if the applicant can demonstrate that he will provide better service to the community in the "public interest."

The House version of H.R. 12993 would weaken this law. A license challenge would be considered only if the holder had failed to meet minimum "community needs, views and interests" standards. The Senate version, on the other hand, would set stricter requirements which broadcasters must "substantially" meet before the FCC could presume that the public interest was being served by the current holder. That presumption could be overturned, if, as under existing law, a challenger could show he would provide better service.

The House-Senate conference will not meet until after the election recess at the earliest. Some political observers in the broadcast industry say that the differences between the two versions are too great and that the bill will be allowed to die.

Broadcast Media/License Renewal

14. **FCC REPORTED READY TO LIFT ALABAMA PUBLIC TV LICENSE ON ANTI-BLACK CHARGES IN EMPLOYMENT & PROGRAMS**

In 1970, a number of citizens groups challenged the license of the state agency in Alabama that operates the state's eight educational television stations.

The groups said that the stations discriminated against blacks in both hiring and programming. An attorney for one of the challenging groups claimed that between 1967 and 1970, the state agency employed only 2 blacks, and that only one-half of one percent of the programming was racially integrated.

According to news reports, in late September 1974, the Federal Communications Commission decided not to renew the license. There has been no official FCC confirmation of the vote, and no written opinion has been released yet.

If the renewal is denied, it will be the first time that an educational television operation has lost its license. It will also mark the first time that the FCC has on its own accord denied renewal to a television station based on a complaint by a citizens' group.

15. **SUPREME COURT LETS STAND RULING THAT MINORITY REPRESENTATION OF TV OWNERSHIP ENTITLED TO WEIGHT IN LICENSE CONTESTS**

In November 1973, the U.S. Court of Appeals for the District of Columbia Circuit held that stockownership by minority group members in a broadcast station may be treated as a favorable factor when the merits and demerits of rivals for a broadcast license are weighed. Judge Charles Fahy, author of the three-judge court's unanimous opinion, ruled a station is entitled to a "merit" if it has minority ownership which "is likely to increase diversity of content, especially of opinion and viewpoint."

The full bench of the circuit court affirmed the opinion in February, but by a 5-4 margin.

On October 29, the Supreme Court let the decision stand.

Broadcast observers say the decision is likely to encourage minority participation in broadcast ownership.

The high court ruling was the latest in a 21-year-old contest for FCC permission to operate Channel 9 in Orlando, Florida. The FCC is now required to reopen the comparative television case in light of the decision that the commission erred in refusing to give "merit" to 14% black ownership in one of the four losing contenders for the Orlando license.

16. **WASHINGTON POST STATION LOGS TAKEN AND FOUND IN POSSESSION OF NIXON RELATED LICENSE CHALLENGER** (See this *PCN*, p. 76)

Televising Congress

17. 18. 19. 20. **PROPOSALS TO TELEVISE CONGRESS BY** a Joint Congressional Committee, a 20th Century Fund Task Force, the American Bar Association & the New York Bar Association (See this *PCN*, p. 18)

Cross Ownership & Antitrust

21. **FCC STAFF REPORT WILL BAN NEW CROSS-MEDIA OWNERS BUT PERMIT MOST EXISTING COMBINATIONS IN METRO AREAS**

Last summer the Federal Communications Commission held public hearings on a proposed rule that would prohibit single ownership of a daily newspaper and a TV or radio broadcast in the same town (see *PCN V*, p. 75).

Although the seven commissioners have not voted on the cross-ownership rule, which was first proposed in 1970, a staff draft order will be completed by the end of the year.

FCC Chairman Richard Wiley made several recommendations on the rule in a speech September 18 before the International Radio and Television Society. Although Wiley stressed he was "speaking only for myself," publications such as *Broadcasting* and *The Washington Post* said many of those recommendations are expected to be contained in the draft report, including:

- Future print-broadcast combinations will be barred completely.

- Most of the 80 newspaper-television and 190 newspaper-radio combinations already in existence will remain intact under a "grandfathering" clause.

- The existing cross-ownerships that the Commission will probably dissolve, will be among those 20 rural markets in which the only newspaper owns the only television station and among those 50 markets in which the only newspaper owns the only radio station.

•In those market areas that the FCC orders the owners of a print-broadcast combination to sell one of its properties, divestiture will not be automatic. Affected license holders will be given the opportunity to appeal the order and argue (1) that the public interest is served by common ownership, or (2) that their financial records indicate that the properties would not survive under separate ownership.

•In the event the appeals fail, publishers would have as long as five years to sell their broadcast properties, and waivers beyond that limit may be granted under certain conditions.

Consideration has also been given to the question of regional concentration of one-owner control. In his September 18 speech, for example, Wiley suggested that the Commission impose a ceiling on the number of stations owned by one corporation within a given state or certain mileage radius.

One question which the recommendations listed above do not answer is whether the final FCC order will permit citizens' groups challenging license renewals to raise cross-ownership as an issue.

The Justice Department Antitrust Division, which originally proposed the cross-ownership rule outlawing all print-broadcast combinations, has recently filed petitions asking the FCC to deny broadcast license renewals to stations owned by local newspapers on the grounds of excessive concentration (see related story this *PCN*, p. 66, and *PCN V*, p. 76). Until now, the FCC has refused to consider the issue in individual cases, citing the fact that an agency ruling is pending.

22. PREFERENCE TO MINORITY CHALLENGERS OF DIVESTED STATIONS URGED BY BLACK MEDIA GROUP

Two months after public hearing on the cross-ownership rule were completed at the Federal Communications Commission, the National Black Media Coalition submitted a proposal to the agency to ensure that minority groups, which currently own less than .5% of the nation's broadcast facilities, would benefit from orders of divestiture.

If the Commission requires newspaper owners to sell their broadcast stations, the black organization said, those owners should give preference to local groups which have "substantial if not controlling minority interests." The Coalition also urged that if no local minority groups were interested in buying an individual station, the owner should give preference to nonlocal groups with substantial minority interests before considering offers from local groups without minority interests.

JUSTICE CHALLENGES MULTI-MEDIA OWNERSHIP IN SALT LAKE CITY 23.

In 1969, the Justice Department filed a cross-ownership complaint against *KSL-AM-FM-TV* in Salt Lake City, claiming that the Mormon Church, which owns the broadcast stations and the *Salt Lake City Deseret News* through a subsidiary corporation, had an undue concentration of mass media in Utah's capital city. The Federal Communications Commission rejected the petition, saying that cross-ownership questions should be settled by a broad agency rule and that such a rule was under consideration. In February 1970, the U.S. Court of Appeals upheld the FCC, although one judge said he ruled as he did "solely" because of the pending FCC review of cross-ownership.

Early this fall, the Justice Department again challenged the *KSL* combination, asking the FCC not to renew the stations' licenses. A Department petition called upon the FCC to decide whether renewing "the *KSL* licenses would not preserve...a degree of media concentration repugnant to antitrust principles." The petition estimated that *KSL* and the Newspaper Agency Corporation, which runs the business and advertising functions of both the *Deseret News* and the *Salt Lake City Tribune*, control 81 % of all media advertising in the area.

NOTE: Future FCC rules on cross-ownership would not affect the Salt Lake City stations, if the agency adopts the recommendations the staff is expected to make. It has been widely reported that the FCC is unlikely to ban all print-broadcast combinations, but will probably limit its dissolution order to those areas having only one newspaper and one broadcast facility, which are commonly owned (see this *PCN*, p. 65). In the Salt Lake City area, there are two television and 17 radio stations not owned by the Mormon Church.

(See story on Justice Department cross-ownership petitions in other cities, *PCN V*, p. 76).

NETWORK ANTITRUST SUIT DISMISSED BECAUSE JUSTICE DEPT. BREAKS PROMISE TO KEEP CONTROL OF NIXON DOCUMENTS 24.

In 1972, the Justice Department filed an antitrust suit against *CBS*, *NBC* and *ABC* charging the three major networks with monopolizing the production and syndication of prime-time entertainment programs. In response, the networks contended that the suit was politically motivated by the Nixon Administration for the purpose of "harassing, intimidating and inhibiting them in the exercise of First Amendment rights." The networks submitted detailed briefs and affidavits, citing threats by Nixon officials to retaliate against alleged network news criticism of the administration (see *PCN V*, p. 76).

In order to prove their claims of political motivation, the networks sought to gain access to various White House tapes and documents. In mid-July, U.S. District Judge Robert J. Kelleher in Los Angeles ordered the government to identify within 60 days "any written, recorded, taped or graphic matter" in the White House or Attorney General's office which related to any plan to use antitrust powers to retaliate against the networks.

In August, following President Nixon's resignation, the networks requested the court to order the government to retain control of Nixon Administration documents and tapes relevant to the antitrust action. After government lawyers acknowledged the Justice Department's duty to ensure government retention of the materials, Judge Keleher rejected the network request as "unnecessary." He then added that the Justice Department "would act greatly to its peril and to the detriment of its lawsuit if it took any action or permitted the taking of any action which was to the prejudice of the defendants in their discovery."

In September, following an opinion by Attorney General Saxbe that Nixon Administration documents were the property of the former President, President Ford announced that the documents would be transferred to Nixon's custody and control and that Nixon would have the "sole right and power of access" to the materials (see related story, this *PCN*, p.). The Justice Department subsequently announced that it could not identify the documents requested by the networks because it could not gain access to them.

The networks then moved to dismiss the suit, arguing that the transfer of the Nixon documents and tapes violated the District Court order and "irreparably prejudiced" their right to establish their defense.

On November 13, Judge Kelleher granted the networks' motion and dismissed the antitrust action.

NOTE: In November, the Watergate Special Prosecutor's office closed its independent investigation of the network charges, saying that it could find no evidence that the antitrust suit was filed for improper motives.

General

25. NEW FEDERAL CAMPAIGN SPENDING LAW HAS MEDIA IMPACT

Climaxing months of congressional debate, a House-Senate conference committee reported out the Federal Elections Campaign Act of 1974 (S.3044) in early October. The bill was passed without amendment by both houses of Congress and signed into law by President Ford on October 15 to take effect January 1, 1974.

Provisions of the act which affect the media are as follows:

• **Advertising limitation for political candidates lifted**—The predecessor to the new law, the Federal Election Campaign Act of 1971, imposed a ceiling upon total media advertising budgets for candidates for federal office. The new law retains this ceiling, but lifts a requirement limiting the share which could be spent on radio and TV. Candidates are allowed to make their own allocations among the media.

• **Certification requirement dropped**—The law repeals a requirement under the 1971 law which gave the printed media major responsibility in the spending limitation scheme. Repealed was a rule that a publication could not accept any political ad without first obtaining the candidate's certification that his or her spending limitations were being observed.

Although now repealed effective January 1, 1975, the certification requirement in the 1971 Act is pending before the Supreme Court for a ruling on its constitutionality. The Supreme Court agreed to review a lower court decision voiding the certification rule as a prior restraint violative of the First Amendment (see *PCN IV*, p.44, and *PCN V*, p.23).

Under the new law, newspapers can accept political advertising without making any inquiry of the candidate involved.

• **Broadcasters' records opened**—The law includes a new provision obligating broadcasters to make all financial records of political advertisements open to the public.

The following amendments, originally included in the Senate version of the Act, were dropped at conference:

• **Equal time**—Sen. Walter D. Huddleston (D-Ky.) introduced an amendment last April which modified the equal time provision (section 315[a]) of the Federal Communications Act as it applied to presidential and congressional elections. The amendment deleted the requirement that broadcasters give equal time to all political candidates seeking the same office, and replaced it with the requirement that a broadcaster donate no less than five free minutes of air time to each candidate (see *PCN V*, p. 82).

Although the Huddleston amendment was killed in conference, it is expected that Congress will debate similar legislation next session. The chairmen of two committees that consider broadcast legislation, Sen. John Pastore (D-R.I.) of the Senate Communications Subcommittee and Rep. Harley Staggers (D-W.V.) of the House Commerce Committee, have both said they will introduce bills early next session to repeal the equal time provision for presidential and vice presidential candidates.

• **Election Night News Coverage**—On April 1, Sen. Henry Bellmon (R-Okla.) introduced an amendment which would have made it illegal for broadcasters to disclose vote totals in presidential elections before midnight, EST, of election day. That amendment was

later mooted by a substitute introduced by Peter Dominick (R-Colo.) which would have closed all polling places in the U.S. simultaneously during federal elections (See **PCN v**, p. 24).

Because both amendments were deleted in conference, broadcasters will be able to continue their practice of reporting upon East Coast election results as soon as votes are tabulated while West Coast polling stations are still open.

26. US COURT OF APPEALS BARS RELIGIOUS BIAS IN RADIO-TV JOBS; US SUPREME COURT DECLINES REVIEW

In July 1971, Trygve J. Anderson complained to the Federal Communications Commission that in applying for a job as an announcer or newsman at Seattle Radio Station *KGDN*, he was asked: "Are you a Christian?", "How do you know you are a Christian?" and "Give a testimony." He requested that the station be required to delete all such questions from its employment applications.

In response to an FCC inquiry, station owner King's Garden, Inc. defended its employment practices, explaining it was a Christian religious organization with a mission to "share Christ."

The FCC determined that King's Garden had an admitted practice of discriminating on the basis of religion in hiring and therefore was in violation of an FCC rule which prohibits religious discrimination in employment.

On appeal, the station argued the FCC rule should be struck down because it conflicts with a 1972 Amendment to the 1964 Civil Rights Act. The FCC rule allows religious discrimination only when the job requires espousing a particular religion over the air, but the 1972 Amendment allows a religious employer to discriminate in hiring for all jobs.

In May 1974, the U.S. Court of Appeals for the District of Columbia affirmed the FCC's finding of discrimination.

In an opinion of Judge Wright, the court upheld the FCC rule against religious discrimination. The judge declared the Commission may enact equal employment rules broader than the Civil Rights Act, because FCC rules have completely independent authority in the Communications Act. Besides, he added, the constitutionality of the broad religious exemption in the 1972 Civil Rights Act amendment is open to serious question.

On November 11, the Supreme Court let stand the D.C. Circuit opinion and the broad recognition it granted to the right of the FCC to police the employment practices of radio and television owners and operators.

27. PUBLIC BROADCASTING FUND STILL IN COMMITTEE

Legislation establishing a Public Broadcasting fund of as much as $100 million a year, to be doled out as annual grants to public television stations meeting public interest standards, is still pending in committee. Hearings on the bill are expected to be held when Congress returns after the election recess (see *PCN V*, p. 78).

28. SUPREME COURT TO HEAR FCC BAN ON LOTTERY INFORMATION

In 1971, the Federal Communications Commission ruled that broadcasting winning state lottery numbers on news programs violated a federal law that prohibits the broadcast of information relating to a lottery.

In January 1974, the U.S. Court of Appeals for the Third Circuit held that the lottery information was newsworthy and therefore protected by the First Amendment (see *PCN V*, pp. 78-79).

The appeals court stated that banning the broadcast of the winning lottery number amounted to an impermissible prior restraint of the dissemination of information. The court said, however, that broadcasters may not accept paid advertisements for lotteries.

On May 28, the Supreme Court agreed to review the case.

(See this *PCN*, p. 11, for an article concerning other lottery related problems.)

29. REPORTER SEEKS ACCESS TO NIXON TAPES

(See this *PCN*, p. 43)

30. NETWORKS SEEK NIXON TAPES

(See this *PCN*, p. 43)

VIII LABOR

1. FED. CT. SAYS EDITORIAL WRITERS ARE "MANAGEMENT" & CAN'T BE GUILD MEMBERS; SUP. CT. REJECTS APPEAL

In 1971, Dorothy Wood, a Guild member and an editorial writer for the *Wichita* (Kan.) *Eagle and Beacon*, was transferred to the Sunday magazine section, a move she considered a demotion. The paper attributed the transfer to what it termed a loss of objectivity stemming from her position on a local Women's Political Caucus.

The Newspaper Guild charged that the move was actually caused by Wood's involvement with the union's bargaining unit at the paper and filed a complaint with the Regional Office of the National Labor Relations Board (NLRB).

An NLRB field examiner ruled in 1971 that Wood was unfairly transferred because of her union activity, a decision subsequently upheld by the National Labor Relations Board which ordered Wood reinstated on the editorial staff with full back pay.

The 10th Circuit Court of Appeals, however, reversed the NLRB decision in March 1973. The court held that Wood's close ties to management as an editorial writer directly responsible to the editor prevented her from becoming a union member.

In upholding the newspaper's right to transfer Wood, the court found she "was an active participant in formulating, determining and effectuating the newspaper's journalistic policy" and concluded that "to hold that a person involved in the formation of editorial content is not aligned with the management would come perilously close to infringing upon newspapers' First Amendment guarantees of freedom of the press."

The Supreme Court refused to hear the case in May, and thus left standing the Court of Appeals decision.

NOTE: In at least two cases since the 10th Circuit's decision, NLRB regional directors have upheld the membership rights of editorial writers in Guild bargaining units.

2. NLRB CLEARS WASHINGTON POST OF UNFAIR GUILD BARGAINING; GUILD DROPS CHARGES AGAINST REPORTERS

Last April during a Washington-Baltimore Newspaper Guild strike against the *Washington Post*, the newspaper management distributed copies of its settlement offer to all Guild members and discussed possible points of compromise in a private meeting with four Guild members who were not part of the union's negotiating team. The Guild immediately filed complaints with the National Labor Relations Board, charging "unfair labor practices" on the grounds that the *Post* was evading the formal negotiation process.

The NLRB dismissed both complaints in July. It declared that the widely circulated settlement offer was not coercive and did not violate labor relations law. It also stated that there was no evidence that the meeting between Guild members and *Post* executives was an attempt to bypass the negotiations process.

The Newspaper Guild also charged the four members who met with *Post* executives with interfering with official negotiations and scheduled an intra-union trial for October 13. The charges were dropped in early October, and the trial was cancelled.

3. WISC. NEWSPAPER ADOPTS CODE OF ETHICS FOR STAFF FIRINGS WITHOUT NEGOTIATING WITH GUILD

In May, the Madison (Wisc.) *Capital Times* adopted a code of ethics that applied to all of its reporters. The code specified certain favors, such as free concert tickets, that reporters could not accept, and said that violators of the code could be fired.

On June 10, the Newspaper Guild filed an unfair labor practice charge with the regional director of the National Labor Relations Board.

The Guild said that because the code of ethics changed the working conditions of *Times* employees, the newspaper had to bargain with the Guild before the code could be adopted.

The NLRB regional director issued a complaint against the *Capital Times*, and a hearing was held before Administrative Law Judge Nancy Sherman in early September.

At the hearing, Guild representatives said they did not object to the principle of a code of ethics, but contended that a newspaper does not have the right to unilaterally impose an ethics code on its employees.

Witnesses for the *Capital Times* said that the code should not be bargained, since some Guild members have a "vested interest" in the favors that the code prohibits.

As of yet, there has been no ruling by Judge Sherman. Both the Guild and the newspaper have said that they will appeal an adverse ruling to the full National Labor Relations Board.

4. CHICAGO SUN-TIMES ADOPTS ETHICS CODE (See this *PCN*, p. 57)

Labor

5. BUCKLEY LABOR CASE BEFORE SUPREME COURT

In 1971, two conservative broadcast commentators, William F. Buckley, Jr., who is the host of "Firing Line," and M. Stanton Evans, who participates on the *CBS* radio series "Spectrum," filed suit challenging a requirement that they join and pay dues to the American Federation of Radio and Television Artists before they could go on the air. They argued that such a requirement constitutes prior restraint in violation of the First Amendment.

In 1973, a U.S. District Court in New York ruled that compulsory union membership was void because of its "chilling effect" on the First Amendment. That decision was reversed last April by the U. S. Court of Appeals (see *PCN V*, p. 77). Buckley and Evans appealed to the Supreme Court, which has not decided if it will review the case.

6. NY TIMES FIRES REPORTER FOR GIVING INVESTIGATIVE STORY TO ROLLING STONE WITHOUT PERMISSION

According to the journalism review (*MORE*), shortly after Denny Walsh of the *New York Times* submitted his lengthy investigative article on Mayor Joseph Alioto of San Francisco, *Times* managing editor A.M. Rosenthal decided to spike it as it was written alleging that it was "unfair." At the urging of another *Times* reporter, Seymour Hersh, Walsh sent the rejected story to *Rolling Stone* magazine without notifying Rosenthal. The magazine eventually decided not to print it either.

In the meantime, (*MORE*) obtained a copy of the Walsh manuscript which the magazine said came from a source "entirely unrelated" to *Rolling Stone* or Walsh. Excerpting information from the manuscript, Washington editor Brit Hume wrote a story which appeared in the August issue.

In their investigation of the leak to (*MORE*), Rosenthal and *Times* national editor David Jones learned that the manuscript had been given by Walsh to *Rolling Stone* without permission from the *Times*. In early August, Rosenthal fired Walsh for releasing a "secret investigative" piece without approval to a publication which could give it wide dissemination. Walsh defended his action, saying that he didn't want his three months of work to be wasted. Walsh also said it was not the first time that other stories the *Times* had killed were printed elsewhere.

7. NEW YORK REPORTER FIRED FOR TAPING AN INTERVIEW

During the summer, Michael Blair, who is an official of New York's Conservative Party as well as an editor for the weekly *Lowville* (N.Y.) *Journal-Republican*, was invited to New York to be a candidate on the Conservative ticket. There he learned that Conservative Party vice-chairman David Bullard had agreed to withdraw from the state's gubernatorial primary in exchange for money and patronage from Gov. Malcolm Wilson and the Republican Party. Blair secretly taped his four conversations with Bullard. *Journal-Republican* owner Robert Smith refused to allow Blair to run the story in the weekly. It appeared in the *New York Daily News*.

On October 19, Smith gave four weeks notice to Blair, who had been with the paper 15 years. Smith described the secret taping as "unethical." Blair maintained the action was not illegal and defended it as the only way he could prove his story.

Federal law permits the taping of telephone and face-to-face communications if one party to the conversation has given his consent.

8. AMERICAN LIBRARY ASSOCIATION WRITER FIRED FOR SEEKING FOI INFORMATION

In May, Peter Masley, then a part-time Washington correspondent for the *American Libraries* magazine (published by the American Library Association) wrote Sen. Lee Metcalf (D-Mont.) asking whether the National Commission on Libraries and Information Science (NCLIS) was subject to the Federal Advisory Committee Act of 1972.

Metcalf, author of the Act which opens federal advisory committee files and meetings to the public, forwarded Masley's letter to the Office of Management and Budget (OMB) for a determination of its applicability to the NCLIS.

In an attempt to "correct a possible misapprehension" contained in Masley's letter, American Libraries Association (ALA) Washington office director Eileen Cooke wrote Metcalf June 20 to "stress" that the ALA "has enjoyed a close and cooperative relationship with the Commission." Cooke also "apologized for any inconvenience" Masley's letter may have caused.

Four days later on June 24, ALA Executive Director Robert Wedgeworth wrote *American Libraries* editor John Gordon Burke directing him to fire reporter Masley since "you appear not to be able to successfully coordinate the services of a free lance Washington correspondent with the Washington office."

"The recent effort of *Americar Libraries*," Wedgeworth wrote, "to obtain directly an interpretation of the status of the National Commission by going to Sen. Metcalf without seeking the advice of either the ALA Washington Office or the Executive Office in Chicago is but another indication of your lack of sensitivity to the delicate problem of coordinating ALA business with the federal government."

Editor Burke quit June 28 protesting Wedgeworth's order to dismiss Masley. In his letter of resignation, Burke wrote that he "recognized *American Libraries* as

an integral part of the ALA" but felt the library community deserved "independent news coverage of major library issues and news events."

In the wake of Burke's resignation, two of his assistant editors, Jill S. Reddig and Mary C. Lux, also resigned protesting Wedgeworth's firing of Masley.

In November, Arthur Plotnik, currently an associate editor of the *Wilson Library Bulletin*, was named to replace Burke as editor of *American Libraries*.

An opinion from OMB on the applicability of the Federal Advisory Committee Act to the NCLIS is still pending.

9. ILLINOIS REPORTER REFUSES TO WRITE STORY; SUSPENDED

On August 24, 1973, John Mark, a reporter with the *Rockford* (Ill.) *Star* and *Register-Republic* was assigned to write a story about a dispute between two corporations, in which Metro Cable of Loves Park charged that Rockford Cablevision, which allegedly had not filed all necessary paperwork with the Federal Communications Commission, was operating illegally. Mark felt that the story was neither "valid" nor timely." In addition, he was unable to contact Rockford Cablevision before his deadline.

Deciding that the story should be delayed until he had the second company's response, Mark refused to submit anything by deadline on the grounds that it violated his "professional integrity" The newspaper suspended the reporter for two weeks, saying that the decision was one for the editors, not for the reporters, and that Mark's "disobedience" had caused the publication of the story to be delayed 24 hours.

The Rockford Newspaper Guild appealed the suspension to the American Arbitration Association, but on August 1, the association upheld the paper's disciplinary action. In the meantime, Mark left his job in Rockford and is now with the *Phoenix* (Ariz.) *Valley News*.

10. RELIGIOUS EDITOR FIRED BY SUPERIOR OVER DIFFERENCES IN 'APOSTOLIC' NEWS JUDGMENT

Early this fall, Rev. James G. Heitter, the editor of a Jesuit monthly newspaper, *The SJ News*, wrote an article criticizing two Jesuit priests who have been in the public eye. The article questioned whether Rep. Robert Drinan (D-Mass.) had permission from his religious superiors to run for office and revealed that Jesuit Provincial Rev. Richard Cleary had ordered Nixon speechwriter Rev. John McLaughlin to leave his post at the White House.

Cleary fired Heitter in mid-October, saying that the article underlined "deep differences of opinion of what news was fit to print and what news will further the apostolic ends of this province." A week later, assistant editor Edna McKinney resigned in protest of Heitter's dismissal.

KDGN REQUIRES LOYALTY OATH (See this *PCN*, p. 68) 11.

IX HIGH SCHOOL & COLLEGE PRESS

1. COLLEGE AND HIGH SCHOOL PRESS LEGAL DEFENSE AND RESEARCH CENTER ORGANIZED

The Reporters Committee and the *Robert F. Kennedy Memorial* have jointly established a Student Press Law Center to act as a research and information clearinghouse on college and high school press problems. The Center was one of the recommendations of the Commission of Inquiry into High School Journalism convened last year by the *Robert F. Kennedy Memorial*. Its report, *Captive Voices*, recommended that a center be established to monitor censorship and other First Amendment issues affecting student journalists.

The Center is located at Room 1316, 1750 Pennsylvania Avenue, N.W., Washington, D.C. 20006. The telephone numbers are 337-1117 or 298-7460.

Barbara Gold, a RFK Fellow who is an attorney and former reporter, will direct the Center which will gather, analyse, and distribute information on First Amendment press rights in high schools and colleges; initiate legal research projects on the rights of student journalists; provide legal assistance to attorneys involved in student press censorship problems; and offer an independent conciliation service which may be able to help settle some student press disputes without costly court litigation.

High School

2. SUPREME COURT CONSIDERS DUE PROCESS RIGHTS FOR HIGH SCHOOL STUDENTS

The Supreme Court will decide this term three cases involving the due process rights of high school students. The cases may help to define the rights of student reporters who find themselves in censorship conflicts with school officials over the content of publications. Suspension is often the threat invoked by those officials to impose their will as to what should be printed.

3. OFF-CAMPUS CENSORSHIP BEFORE SUPREME COURT

Last December, the U.S. Court of Appeals for the Seventh Circuit found a school board rule prohibiting the distribution of literature "likely to produce a significant disruption" of the educational process unconstitutionally vague, overbroad and detrimental to the First Amendment rights of students.

The court also ruled that, although the publication contained a "few earthy words," it was not "obscene as to minors."

The Indianapolis Board of School Commissioners asked the U.S. Supreme Court to review the decision, claiming that the constitutional standards for vagueness and overbreadth do not apply to school disciplinary measures, that the publication was "obscene as to minors," and that the power of school officials to control the student press exceeded the power of the state to control adult newspapers in general.

On June 3, the Supreme Court agreed to hear the case. (see *PCN V*, p. 26). A hearing is expected in December or January.

4. SPIKED PUNCH CASE BEFORE SUPREME COURT

Two women students from Mena (Arkansas) High School were expelled without a full hearing before the Board of Education after having allegedly poured 3.2 beer into punch destined for a home economics class party (see *PCN V*, p.26). The girls were expelled for a term only, but, under local school rules, such expulsion meant they missed an entire year of school.

The students sued in federal court for damages under the civil rights laws. The School Board argued that federal courts had no interest in local school disciplinary problems. The United States Court of Appeals for the Eighth Circuit ruled, on August 29, 1973, that the students were denied due process of law by school board procedures resulting in lengthy suspensions from school for alleged violations of regulations with respect to the possible use of intoxicating liquors at school functions on school premises when there was no evidence or finding that the beverage was intoxicating.

The Supreme Court granted review.

5. STUDENTS CHALLENGE NO-NOTICE SUSPENSION

Nine Columbus, Ohio pupils were suspended under an Ohio statute which permits school authorities to suspend students without providing notice until after the fact and allows an appeal only to the Board of Education. The pupils were suspended for disruption, failure to obey orders immediately, defiance, and disrespect. In some cases, no reason was given.

A three-judge Federal Court held that the right to an education, although not literally guaranteed by the Constitution, was protected by the Fourteenth Amendment's guarantees against deprivation of liberty without due process of law and that the Ohio statute authorizing school administrators to suspend pupils from school for not more than ten days, and the regulations adopted to implement that statute, were unconstitutional in that they provided for suspensions without prior hearings and without hearings within a reasonable time after the suspensions.

The school authorities argued to the Supreme Court that the Constitution does not guarantee any fundamental right to an education and that the school disciplinary rules were valid because they imposed only temporary deprivations.

6. OHIO STUDENTS WIN CENSORSHIP CASE ON APPEAL

In November 1971, Principal Joseph Endry of the Reynoldsburg, Ohio, high school objected to seven articles in the high school paper and prevented distribution. The parties, by stipulation, presented the matter to a federal court for decision based on the suppression of only one article—an editorial called "Where are You Mr. H.S. Athlete?"

The District Court dismissed the complaint because it believed defendant Endry had a right and a duty to exercise his discretion to suppress the article.

The Sixth Circuit Court of Appeals reversed. It rejected as clearly erroneous the lower court's finding that the editorial would be disruptive of an orderly and peaceful atmosphere in which children could receive an adequate education.

7. U.S. DISTRICT COURT UPHOLDS MD HIGH SCHOOL CENSORSHIP

Last spring, Chief Judge Edward S. Northrop of the U.S. District Court for the District of Maryland held that the Baltimore County Board of Education is not prohibited from exercising prior restraint as to the content of student publications. He concluded that pre-publication censorship of secondary school publications were permissible if censorship regulations provided "narrow, objective, and reasonable standards by which the material can be judged."

He rejected four sets of proposed regulations before accepting a fifth on May 30. The new regulations narrowed the Board's definition of libel and obscenity, but continued to permit administrators to review the content of all student publications prior to distribution.

The student journalists appealed to the U.S. Court of Appeals for the Fourth Circuit challenging the Board's right to mandate prior restraints on the content of high school newspapers (see *PCN V*, page 28). The case is calendared for the January term.

8. APPEALS CT UPHOLDS TEACHER'S RIGHT TO SUE NAVY ON IMPROPER DISMISSAL CLAIM

Three years ago, a teacher hired to teach Navy dependents at the U.S. Naval Station on Midway Island was fired at the end of her one year probationary period. She had made and circulated statements critical of the school administration and its policies during that time.

She filed a complaint in federal court seeking a declaratory judgment that her dismissal denied her the freedom of speech guaranteed by the First Amendment and by the Due Process clause of the Fifth Amendment.

The District Court granted summary judgment to the government and the teacher appealed.

The United States Court of Appeals for the District of Columbia, on August 16, 1974, held that, although the agreement between teacher and school did not create the expectancy of job retention, the teacher was entitled to an opportunity to prove her charges that she was dismissed on an impermissible basis.

The Court said it was manifest that all the reasons the Commanding Officer gave for the dismissal rested on the teacher's critical statements and that this raised a constitutional issue.

9. MUNCIE HIGH SCHOOL PAPER CENSORED; JOURNALISM ADVISOR DISMISSED

Last May, Joan Lentczner filed suit in the Delaware County (Indiana) Circuit Court challenging her dismissal as a journalism teacher and publications adviser at Yorktown High School in Muncie, Indiana. Editors of the high school newspaper she advised wanted to publish a five-part series on the problems of premarital sex among students, reactions from doctors and clergy, planned parenthood, abortion laws, and sex education.

School administrators censored part of the second series of articles and, shortly thereafter, Lentczner was asked to resign. She refused and was subsequently dismissed.

The Journalism Education Association and SDX are supporting her lawsuit. The School Board has not yet replied to her complaint. Both sides in the case are now trying to agree on a panel to select a non-local judge to hear the case. Lentczner's attorneys believe the case has such strong political ramifications in Muncie, a change of venue is preferable.

10. L.A. TEACHERS DROP POSSIBLE SUIT OVER SCHOOL BOARD'S CENSORSHIP POWER

In April 1974, the Los Angeles Journalism Teachers Association urged the school board to abandon its current policy giving principals the authority to censor when necessary (see *PCN V*, p. 28).

Now the Association has decided to hold up on litigation because a second paragraph in the Board's rule now states that students should be allowed to express their opinions and that controversial subjects should be presented in depth with a variety of viewpoints published simultaneously.

The Association feels that if this paragraph is adhered to by principals, the Association has gained considerably.

11. SCHOOL TEXTBOOK CONTROVERSY ERUPTS IN W. VA.; LEADS TO VIOLENCE; PARTIES SEE NO COMPROMISE IN SIGHT

Last April, Alice Moore, a school board member in Charleston, West Virginia, and wife of a fundamentalist Baptist minister, complained that textbooks adopted by the school board encouraged disrespect for authority and religion and contained "filthy language." Works by Gwendolyn Brooks, the black poetess, e.e. cummings, Sigmund Freud, Dick Gregory, Eldridge Cleaver, Allen Ginsberg, and others were cited. At a Labor Day Rally in Charleston, the books were condemned as "anti-religious, Communistic, and pornographic."

When school opened, Mrs. Moore's supporters began a boycott which escalated into a strike of the area's 5,000 miners. School buses were stopped. School entrances were blocked. One demonstrator was shot. Another was beaten. Kanawha County schools were closed for fear of violence.

By the end of September, the schools were reopened. A special citizens' committee was appointed to examine the books. On October 29, the committee issued a favorable report and a vote was set by the Kanawha County Board of Education on whether all, some or none of the books should be returned to county classrooms.

Protests were renewed. A stick of dynamite was tossed through a window of an elementary school at 3:30 a.m. A Fundamentalist delegation made a trip to Washington to try to persuade federal officials to cut off school funds to West Virginia unless the books are banned, and Roger Senerad, a White House aide for eduction and labor, promised he would try to "help find a constructive compromise for this situation."

On November 8, 1974, the School Board voted to return the controversial textbooks to the classrooms, and added that those who object to their content would not be forced to read them.

Mrs. Moore announced after the meeting that, "Parents may now be forced to educate their children in their homes" and hinted that a court challenge to the state's compulsory education laws might be imminent.

12. College

UNIV. OF MONTANA EDITOR FIRED, REINSTATED

The editor of the *Montana Kaimon*, the student newspaper at the University of Montana in Missoula, was fired in October by the student editorial board after she wrote an editorial calling the head of the university's print shop a "congenital liar."

The Board called her to an evening meeting already in progress which she refused to attend and then voted to fire her.

She and her attorney then went to the Central Board of the Student Senate where the attorney explained that she had been denied due process in the firing in that she had no advance warning of the meeting and no notice of the charges against her. She was reinstated pending another hearing in November.

13. JUSTICE DEPARTMENT SAYS SUBPOENA GUIDELINES APPLY TO COLLEGE PRESS (See this *PCN*, p. 39)

14. FED. CT. SAYS COLLEGE CAN'T FIRE TEACHERS WHO REJECT "PERSONALITY CONTROL"

On April 24, 1973, fourteen teachers issued a press release to the media criticizing the policies of the school president at the Oklahoma College of Liberal Arts in Chickasha. On April 26, 1973, the President recommended to the Board of Regents that the fourteen be terminated. The Board voted 5 to 2 to do so.

The teachers sued in Federal Court under the civil rights laws alleging that their terminations were the result of denial of their rights of freedom of expression guaranteed by the First Amendment.

The U.S. District Court held that the firings were unrelated to the teachers' rights to express themselves freely.

The Court of Appeals for the Tenth Circuit overturned this finding on August 16, 1974 and held that the teachers were fired because they refused to conform to the President's patterns and molds of behavior, all of which were subjective.

The "right to be free from this kind of personality control is constitutionally protected under the First Amendment," the court said.

15. DAVIDSON COLLEGE YEARBOOK HELD UP BY SCHOOL OFFICIALS

Officials at Davidson College (North Carolina) ordered printers not to bind a yearbook containing a picture of nude male streakers and the words "Fuck P.E." (physical education). The students offered to substitute asterisks for the words and to cover the streakers' genitals but official said they wanted the objectionable material removed entirely.

The students brought the matter before the Board of Trustees which sent the matter back to the President of the College and the Editor of the Yearbook for further attempts at compromise. The Board also decided to appoint a Review Board to set up journalistic standards for future publications.

The President and the Editor agreed to substitute asterisks for the offending words and to cover the male genitals.

16. DENVER EDITOR SUSPENDED AFTER PUBLISHING LETTER CRITICAL OF BLACKS

Metropolitan State College (Denver, Colorado) administrators voted last month to suspend Margaret Peterson, editor of the school newspaper, because she had published an anonymous letter critical of black students and the black studies program.

The problem, according to the Center for the Rights of Campus Journalists, a Denver project, was resolved administratively with a decision to prepare written guidelines so the problem would not occur again.

Subsequently, the editor was threatened with suspension again when the newspaper ran a comic strip describing white students who refused to be bussed as "playing hooky." After this comic strip was published, students in the All-African Student Union objected that the strip treated a serious problem frivolously and called for the editor's removal and the removal of the Publications Board. No administrative action was taken.

An appeal is still pending on the original vote to suspend her for a term. She was reinstated pending this appeal.

17. OHIO UNIV. EDITORS SUED FOR LIBEL

Last spring, reporters for the *Ohio University Post* wrote an article claiming that the campus personnel director, Ward Wilson, gave union Local 1699 president, Tommy Adkins, university information to discredit leaders of an on-campus student union.

Wilson denied the charges the day the article appeared and filed a libel suit against reporters S. Ezra Goldstein and Gary Putka and editor P.J. Bednarsky (see *PCN* V, p. 9)

The defendants filed an answer claiming that if the judge reads the entire story rather than an isolated remark, he can only find that the story, taken as a whole, is not libelous.

18. STUDENT PRESS LAW APPLIES IN PRISON CASES (See this *PCN*, p. 10)

X MISCELLANEOUS DEVELOPMENTS

1. NEW JERSEY FARM BOSS INDICTED FOR ATTACK ON NEWSMAN

Newark Star-Ledger reporter Charles O. Finley and photographer Thomas Herde accompanied New Jersey state assemblyman Byron Baer on a July 16 inspection tour of migrant farm working conditions on a farm owned by Fred J. Sorbello. Finley, Herde and Baer claimed that they were chased from the farm by club-wielding individuals who smashed their car windows and broke Baer's left arm (see *PCN V*, p. 72).

The *Star-Ledger* filed a suit against Sorbello in federal court in July alleging that Sorbello and his migrant worker crew leader Marcus Portalatin "maliciously conspired" to conceal the condition of migrant workers on the Sorbello farm from the public, thereby depriving Finley and Herde of their First Amendment right to engage in investigative reporting of the conditions.

In September, the federal grand jury for the district of New Jersey handed down a nine count criminal indictment against Portalatin charging him with four counts of holding migrant farm workers in involuntary servitude, three counts of interfering in the civil rights of migrant farm worker assistants attempting to enter the Sorbello farm and two counts of obstruction of justice. In addition, the Gloucester County grand jury indicted Portalatin for his attack on assemblyman Baer.

The separate civil action of the *Star-Ledger* is still pending although no trial date has been set.

2. WASHINGTON POST STATION LOGS TAKEN AND FOUND IN POSSESSION OF NIXON RELATED LICENSE CHALLENGER

On September 15, 1972, three months after the Watergate break-in, then President Richard Nixon attacked the *Washington Post* for its vigorous coverage of the scandal and vowed that the paper, which owns two television stations in Florida, would have "damnable problems" at license renewal time. Less than four months later, license challenges were filed against both stations — *WJXT* in Jacksonville and *WPLG* in Miami — by individuals who had close political ties with the Nixon administration (see *PCN V*, p. 80).

This summer, *WJXT* learned that program logs for November of 1972, which had been missing since last March, were in the office of license challenger George Champion, president of Florida Television Broadcasting Company. According to George Ness, a former employee of the Post-Newsweek station, the logs were being used in an attempt to prove that *WJXT* had violated FCC regulations. In addition, Champion's office also had photostatic copies of *WJXT*'s logs for August 1-15, 1972.

Florida Television explained that the logs were delivered "anonymously" in late June and that the material was promptly returned to the station without being examined.

Post-Newsweek asked the FCC to investigate the "possible theft" and its effects upon Champion's character qualifications. Champion responded that the charges were based on hearsay and that Post-Newsweek had failed to document specific facts.

The FCC held a hearing in early October at which Post-Newsweek and Florida Television introduced conflicting analyses of *WJXT*'s news and public interest programming. The Commission has not yet decided whether to hear the "missing logs" issue.

In late November, the Tropical Florida Broadcasting Company abruptly withdrew its challenge against the WPLG license. The action came less than one week before hearings on the challenge were to be held in Miami.

3. CONGRESSMAN ACCUSED OF STOCK FRAUD TRIED TO BUY PAPER THAT BROKE STORY

Before he was elected to a seat in Congress in 1972, E. G. Shuster (R-Pa.) used his business skills to transform a small data equipment firm into valuable property. Along with $1.8 million Shuster personally realized, though, came a multimillion dollar suit alleging that he perpetuated a stock fraud.

The *Bedford* (Pa.) *Gazette* wrote a series on the Congressman's financial dealings. Although the paper has given Shuster's denials of wrongdoing ample space, Jack Anderson of *The Washington Merry-Go-Round* reported in late October that Shuster had attempted to buy "half of the *Bedford Gazette*, an almost certain way of ending . . . hard-digging stories about Shuster."

Shuster acknowledged to Anderson that he made preliminary negotiations to buy into the paper, but said it was "ridiculous" to think those negotiations had anything to do with the paper's investigations.

4. ROCKEFELLER LOAN FUNDED PURCHASE OF CALIF. NEWSPAPER

In October, 1974, Washington columnist Thomas Braden disclosed that he received a $100,000 loan from Nelson Rockefeller in 1954 which was used as part of a down payment for his purchase of the *Oceanside* (Calif.) *Blade-Tribune*.

Braden finished repaying the loan, with interest, in 1966. This indicates that Rockefeller had an interest in the newspaper when he was running for the presidential nomination in both 1960 and 1964.

Braden, in an October 19th column, stated that he and Rockefeller have been friends for 33 years and that Rockefeller "didn't buy a newspaper columnist. He made a loan to a friend . . . who—on two occasions when he ran for the presidential nomination—supported candidates from the other party."

5. COPYRIGHT BILL HEADS FOR PASSAGE; MEDIA TO GET BROAD FAIR USE RIGHTS; TV NEWS EXEMPTION LIKELY

After years of unsuccessful attempts, the Senate voted 70 to 1 September 9 to update the Copyright Act of 1909.

The complex bill would significantly raise the standard of copyright protection available to authors under the 1909 law. The duration of a copyright, now 28 years with a right of renewal for another 28 years, would be extended to a term lasting for the life of the author plus another fifty years.

Another provision of the bill cites reproduction of copyrighted works for "news reporting" purposes as one instance of "air use" which is not a copyright infringement.

But libraries and archives would be prohibited from making more than one copy of a work without payment of royalties. The question of whether multiple copying by government libraries and archives violates the present copyright law is now pending before the Supreme Court (see story elsewhere on this page).

(An amendment to the Senate bill creates a special exemption from the copyright laws for the Vanderbilt University Television News Archive in Nashville, Tenn., which tapes and maintains for scholarly purposes recordings of the evening news programs and special news telecasts of the three networks. See story below.)

The copyright bill will die with the expiration of the 93rd Congress in December. Backers of the bill hope that the Senate will repass it early in the new session. The House will begin its consideration of the bill with hearing conducted by a Judiciary subcommittee headed by Rep. Robert W. Kastenmeier (D-Wisc.).

The objective is enactment of a new copyright law by late 1975 or early 1976, according to a Senate committee staff member.

6. CBS OPPOSES FEES FOR VIEWING NEWS

Since 1968, Vanderbilt University in Nashville, Tenn. has been taping the nightly newscasts and special news programs of the three networks for preservation in a Television News Archive. The tapes are available to researchers for a small fee.

Because of this fee arrangement, *CBS* filed suit against the University, charging infringement of its copyright.

With the *CBS* test of the Vanderbilt archive's legality under the present copyright law still in the pre-trial stage, the Senate acted September 9 to make sure the question cannot arise under a proposed copyright law revision (S-1361) (see story above.) It approved an amendment exempting the archive from the Senate copyright revision bill.

Sen. Howard H. Baker (R-Tenn.), sponsor of the bill, said the Vanderbilt archive is necessary to preserve important historical materials and will not survive without immunity from the copyright law. He added that the exemption in his opinion "asks little of the three major networks who have been given use of a valuable public resource through their television licenses which are conditioned solely on their obligation to serve the public interest, convenience, and necessity."

The amendment creating a copyright exemption for Vanderbilt will die with the main copyright revision bill at the end of the 93rd Congress in December, but both the bill and the amendment are scheduled to be reintroduced early in the new Congress.

7. SUPREME COURT TO HEAR GOVERNMENT COPYRIGHT CASE

The first copyright infringement suit involving library copying is before the Supreme Court this session. Williams & Wilkins Co., a Baltimore publisher of technical journals is challenging the "age of the Xerox machine" phenomenon in a suit to collect "reasonable compensation" from the federal government for multiple photocopying of articles from its journals.

The Supreme Court's decision on whether large-scale reproduction of copyrighted works can be done without paying royalties is certain to have a major impact on libraries, authors and publishers (see *PCN V*, p. 22).